

DECISION

2019 NSUARB 17
M08890

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER

- and -

IN THE MATTER OF AN APPEAL by **JEFF WEATHERHEAD** of a Decision of Harbour East – Marine Drive Community Council to approve a Development Agreement to allow an eight-storey multi-unit residential building containing ground floor commercial use on the combined sites located at 307 Prince Albert Road and 5 Glenwood Avenue, Dartmouth, Nova Scotia.

BEFORE: Richard J. Melanson, LL.B., Member

APPELLANT: **JEFF WEATHERHEAD**
On his own behalf
Robert Pineo, LL.B.

RESPONDENT: **HALIFAX REGIONAL MUNICIPALITY**
E. Roxanne MacLaurin

APPLICANT: **MONACO INVESTMENTS PARTNERSHIP**
Nancy G. Rubin, Q.C.
Sara Nicholson, LL.B.

HEARING DATE: December 10, 11 and 21, 2018

DECISION DATE: **February 19, 2019**

DECISION: **Appeal is dismissed.**

Table of Contents

I	INTRODUCTION	3
II	ISSUE	6
III	LEGISLATIVE FRAMEWORK	7
	a) Halifax Regional Municipality Charter	7
IV	FACTS	10
V	EVENING SESSION / LETTERS OF COMMENT	21
VI	OPINION EVIDENCE	22
	1. Preliminary Motion – Expert Evidence Relied on by the Appellant	22
	2. Lloyd Report	26
	3. Ouellet Report	29
VII	ANALYSIS AND FINDINGS	32
	1. Burden and Standard of Proof	32
	2. Scope of Appeal and Standard of Review of Community Council’s decision.....	32
	3. Experts’ Reports – Admissibility	35
	a) <i>Ouellet Report and Common Law Test</i>	35
	b) <i>Ouellet Report – s. 19 of the UARB Act</i>	40
	c) <i>Weight</i>	41
	d) <i>The merits of the Appeal</i>	42
	i) Interrelationship and Conflicts – RMPS and DMPS.....	42
	ii) Decision of Community Council – DMPS and DLUB analysis.....	46
	iii) The Building’s Form	48
	iv) Density	50
	v) Traffic and Sidewalks	53
	vi) Height, Wind effects and the Lake Banook Canoe Course	54
	vii) Final Considerations	58
VIII	SUMMARY AND CONCLUSION	59

I INTRODUCTION

[1] The Applicant has been attempting to re-develop two abutting properties located at 307 Prince Albert Road and 5 Glenwood Avenue, in Dartmouth (Properties), for many years. The Properties are in the vicinity of Lake Banook, and its world-class competitive paddling course, located on the opposite side of Prince Albert Road.

[2] In 2012, a proposal to build a 15-storey, 92-unit, residential building, which required rezoning and development agreement approval, was rejected by the Harbour East Community Council. This decision was ultimately upheld on appeal to this Board [see 2012 NSUARB 155].

[3] After a lengthy planning process, involving various changes to the Applicant's proposed project, the Harbour East – Marine Drive Community Council (Community Council) approved a rezoning application for the Properties on April 5, 2018, but rejected a proposed Development Agreement.

[4] Community Council's decision to rezone 307 Prince Albert Road from C-2 (General Business) to GC (General Commercial) and 5 Glenwood Avenue from R-2 (Two Family Residential) to R-4 (Multi-Family Residential – High Density) was not appealed.

[5] On September 6, 2018, Community Council approved a Development Agreement for the Applicant's latest proposed project, which now consists of an eight-storey multi-unit building, with a penthouse occupying a portion of the eighth floor, with commercial uses approved for the ground floor.

[6] On September 19, 2018, the Appellant, who resides near the Properties, filed an appeal with the Board pursuant to s. 262 of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39, as amended (*HRM Charter*).

[7] In his Notice of Appeal, the Appellant said Community Council's decision did not reasonably carry out the intent of the applicable municipal planning strategy because:

DMPS Policy IP-5: IP-5(a) Height, Bulk, and Scale is **NOT** compatible with the existing neighbourhood. **IP-5(b)(i) and (ii)** there are **NOT** sufficient controls in place to reduce conflict with nearby land uses in terms of height, size, bulk, and density, traffic access and egress. For Implementation Section "q" Policies IP-9, IP-10 and IP-11 protections of Lake Banook Race Course, there have not been sufficient controls put in place to reduce conflict with this identified use as a race course.

[Exhibit W-1]

[8] A Notice of Hearing was served in accordance with the Board's Hearing Order and advertised in the Chronicle Herald.

[9] No party sought Intervenor status in the proceeding. The Board received 55 letters of comment. Seven persons spoke at an evening public session held on December 10, 2018. All letters of comment and all public speakers opposed the Applicant's proposed project.

[10] The Appellant is a lawyer, who practices primarily in the area of contracts with a private company. He represented himself, but also sought the assistance of Robert Pineo, LL.B., who attended with the Appellant and participated in the hearing before the Board.

[11] E. Roxanne MacLaurin, LL.B., acted for HRM.

[12] The Applicant initially had not participated in certain preliminary sessions, including when the Board established the time line for the proceeding. Eventually, Nancy G. Rubin, Q.C. was retained, and participated in some preliminary matters, and at the hearing. She was assisted by Sara Nicholson, LL.B.

[13] The Board notes that while there was some initial confusion as to whether a request to intervene was required from the Applicant, the Board agreed with Ms. Rubin

that the Applicant was a party as of right pursuant to s. 4 of the *Utility and Review Board Regulations*.

[14] In a preliminary matter, HRM sought to strike certain evidence filed by the Appellant relating to the split motion of Community Council leading to rezoning, as well as evidence relating to the Draft Regional Centre Secondary Municipal Planning Strategy dated October 2018; the Draft Regional Centre Land Use By-Law; Downtown Dartmouth; and associated documents (Draft Centre Plan).

[15] With respect to the split motion, the Board ruled that the process followed by Community Council in arriving at its decision was not subject to appellate review by the Board. However, as the process followed was a matter of public record, was set out in the Appeal Record, and the evidence related to this split motion provided some limited assistance as to context, there was no need to redact this evidence.

[16] The Board ruled that the Draft Centre Plan would not be used as an interpretive tool in relation to the planning documents which are currently in force. It ordered that the Draft Centre Plan documents be struck.

[17] HRM also challenged the qualifications of the Appellant's experts. In addition, there were numerous references to the Draft Centre Plan in the expert evidence filed by the Appellant. These aspects will be addressed when discussing opinion evidence later in this Decision.

[18] In any event, the Board's reasons in relation to HRM's preliminary application are set out in a letter decision dated November 22, 2018.

[19] A further evidentiary issue was raised with respect to the disclosure of certain documents related to the Applicant filing a request for a development permit, to build a hotel on the Properties, while this Appeal was in process.

[20] The Board ultimately ruled that certain documents should be disclosed to the Appellant. The Appellant was at liberty to re-apply to the Board for access to the remaining requested documents, if he took the position they were still required after receiving the initial disclosure. No further application was brought to the Board. The Applicant's building permit application plays no part in the Board's decision in this matter.

[21] The Board heard the Appeal at its offices in Halifax, on December 10, and 11, 2018. Written submissions were filed by the parties following the hearing. After these filings, oral submissions were made before the Board, on December 21, 2018.

II ISSUE

[22] The issue to be determined in this proceeding is whether the decision of Community Council failed to reasonably carry out the intent of the applicable municipal planning strategy.

[23] For the reasons that follow, the Board concludes that the Appellant has not discharged the burden of showing Community Council's decision failed to reasonably carry out the intent of the applicable municipal planning strategy. The Appeal is therefore dismissed.

III LEGISLATIVE FRAMEWORK

a) Halifax Regional Municipality Charter

[24] The *HRM Charter* sets out the legal framework for consideration of proposed development agreements.

[25] The *HRM Charter* provides a broad authority for the democratically elected and accountable HRM Council, from which Community Council derives its authority, to decide matters coming before it.

[26] The purpose of the *HRM Charter*, as a whole, is set out in s. 2:

The purpose of this Act is to

(a) give broad authority to the Council, including broad authority to pass by-laws, and respect its right to govern the Municipality in whatever ways the Council considers appropriate within the jurisdiction given to it;

(b) enhance the ability of the Council to respond to present and future issues in the Municipality; and

(c) recognize that the functions of the Municipality are to

(i) provide good government,

(ii) provide services, facilities and other things that, in the opinion of the Council, are necessary or desirable for all or part of the Municipality, and

(iii) develop and maintain safe and viable communities.

[27] With respect to the purpose of Part VIII of the *HRM Charter*, relating to planning and development, s. 208 states in part:

The purpose of this Part is to

...

(b) enable the Municipality to assume the primary authority for planning within its jurisdiction, consistent with its urban or rural character, through the adoption of municipal planning strategies and land-use by-laws consistent with interests and regulations of the Province;

(c) establish a consultative process to ensure the right of the public to have access to information and to participate in the formulation of planning strategies and by-laws, including the right to be notified and heard before decisions are made pursuant to this Part; and

...

[28] Community Council's power to consider development agreements is established pursuant to s. 31 of the *HRM Charter*:

(1) This section applies to a community council if the Council so provides in the policy establishing the community council

(2) Where a municipal planning strategy of the Municipality provides for development by agreement, the community council stands in the place and stead of the Council and Part VIII applies with all necessary changes.

[29] Section 228 of the *HRM Charter* describes the purpose of a municipal planning strategy:

The purpose of a municipal planning strategy is to provide statements of policy to guide the development and management of the Municipality and, to further this purpose, to establish

(a) policies that address problems and opportunities concerning the development of land and the effects of the development;

(b) policies to provide a framework for the environmental, social and economic development within the Municipality;

(c) policies that are reasonably consistent with the intent of statements of provincial interest; and

(d) specify programs and actions necessary for implementing the municipal planning strategy. 2008, c. 39, s. 228.

b) Municipal Planning Strategy

[30] The Dartmouth Municipal Planning Strategy (DMPS) applies to the Properties. Chapter 11 of the DMPS contains Implementation Policies. Of them, Policy IP-5 is most relevant. This policy requires that proposed apartment building projects proceed by way of development agreement. It sets out the criteria Community Council had to consider in this matter and incorporates by reference Policy IP-1(c), relating to zoning amendments and contract zoning.

[31] Policies IP-9 and IP-10 create a 35-foot height restriction for development in the Lake Banook Canoe Course Area, as identified on Map 9s of the Dartmouth Generalized Land Use Map, subject to existing non-conforming structures, which are

exempt pursuant to DMPS Policy P-11. The Properties are located immediately adjacent to, but not within, the Lake Banook Canoe Course Area.

[32] Wind impact and wind studies were discussed in this proceeding. The Board notes DMPS Policy H-16, which was raised during the hearing, is the only policy which specifically requires a wind study be conducted before a development can be approved. This requirement relates to a former YMCA site, which is within the Lake Banook Canoe Course Area.

[33] The HRM Regional Municipal Planning Strategy (RMPS) was also referenced in the proceeding. In particular, the Appellant said RMPS G-1, RMPS G-3 and RMPS G-7, which address community engagement, community visioning and the order of precedence in planning strategies, were relevant to the Board's analysis. The Appellant also submitted the RMPS settlement and housing objectives and RMPS S-9, which addresses these objectives, should be considered. RMPS G-15, which specifies certain development agreement requirements, was discussed.

[34] The Appellant submitted the following policies were also relevant:

- DMPS R-6, which creates an intention to "...protect and develop the Dartmouth Commons and Lake ... Banook as strong city-wide recreation areas";
- DMPS Policy E-8 – relating to potential impacts of runoff and contaminants from commercial and industrial sites; and,
- DMPS Policy T-10 relating to an intention to undertake a study to widen Braemar Drive.

[35] The Dartmouth Land Use By-Law (DLUB) was discussed in evidence and argument. In particular, the restrictions and requirements of the GC (General

Commercial) and R-4 (Multi-Family Residential - High Density) zones were raised by the Appellant in support of parameters for planning metrics which, it was argued, the proposed project did not meet.

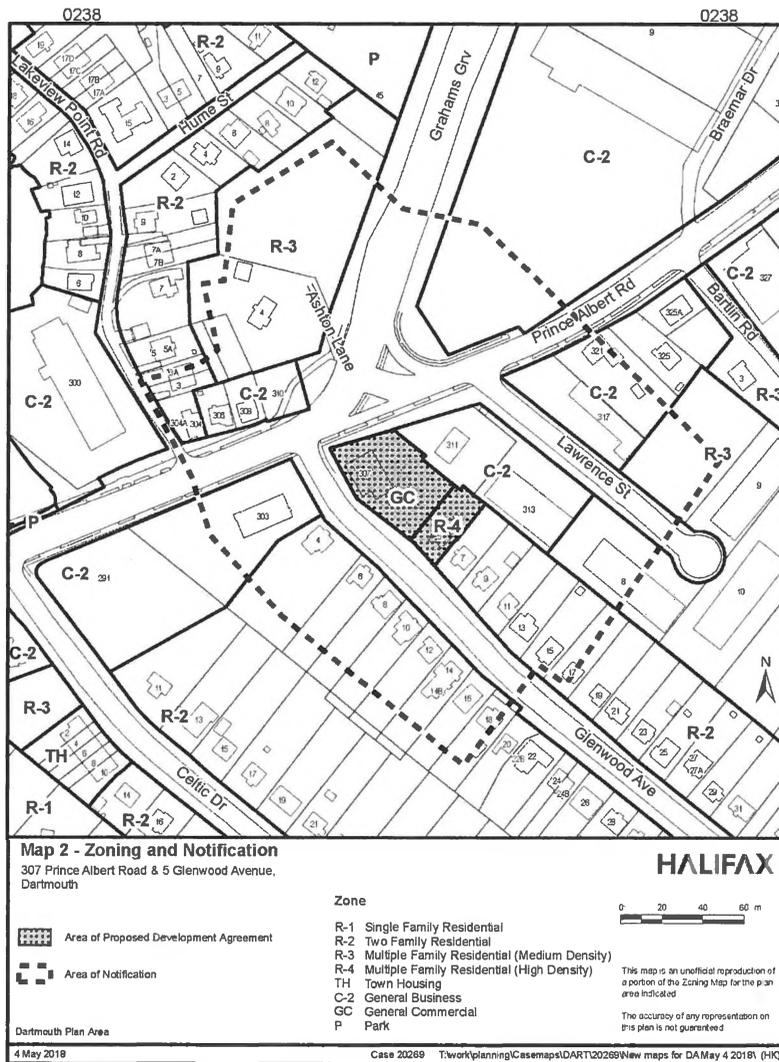
[36] The above provisions of the RMPS, DMPS and DLUB are reproduced in the attached Appendix "A", for ease of reference.

IV FACTS

[37] The Properties are located at the corner of Prince Albert Road and Glenwood Avenue. The lot at 307 Prince Albert Road housed the former Walker's Funeral Home. The 5 Glenwood Avenue property was used as a family residential home.

[38] The combined size of the two lots is approximately 2,388 square meters (25,705 square feet). The 307 Prince Albert Road property is a corner lot, with frontage on both Prince Albert Road and Glenwood Avenue.

[39] Prince Albert Road is a four-lane major collector street. Map 2 attached to a staff report dated June 20, 2018, prepared by Luc Ouellet, MCIP, LLP, Planner III (Staff Report), is reproduced below. It shows the lots in the general vicinity of the Properties. Both Sides of Prince Albert Road in this area are primarily zoned C-2 (General Business):



[Exhibit W-3, p. 238]

[40] Glenwood Avenue, apart from where it intersects with Prince Albert Road (where the Properties and a Robin's Donuts outlet are located), is zoned R-2, and the streetscape is in keeping with this zoning. It is comprised of single family and duplex housing.

[41] The Appellant's property is situated on a large lot at 4 Ashton Lane. Ashton Lane is a small lane generally located across from the Properties, near the intersection of Grahams Grove, Prince Albert Road and Glenwood Avenue. It is within the notification

area utilized by Community Council for the public hearing process in relation to this matter.

[42] The Staff Report describes the surrounding uses in the general neighbourhood of the Properties as follows:

- A car repair garage and an auto parts dealership;
- A supermarket;
- A hotel;
- A combination of a retail fuel outlet, convenience store, and two restaurants;
- Low-density residential house forms;
- Multi-unit residential buildings; and
- Kiwanis Grahams Grove Park and Lake Banook Regional Park.

[Exhibit W-3, p. 234]

[43] The Properties are located on the opposite side of Prince Albert Road from Lake Banook, which, as is well known, hosts a world-class, internationally renowned, competitive paddling course. The Properties are located a minimum distance of 150 meters from the boundary of Lake Banook.

[44] As discussed earlier in this Decision, subsequent to a successful rezoning application, 307 Prince Albert Road is zoned G-C (General Commercial) and 5 Glenwood Avenue is zoned R-4 (Multi-Family Residential – High Density) under the DLUB.

[45] The Development Agreement proposal that was submitted before Community Council on September 6, 2018, is summarized in the Staff Report:

Proposal

The applicant proposes to remove the existing buildings on the subject site and construct an 8-storey multi-unit residential building containing ground floor commercial uses. Further detailed elements of the proposal are as follows:

- A maximum of 90 dwelling units;
- A minimum of 33% of the dwelling units shall consist of 2 or more bedrooms;
- Up to 605 square metres of the ground floor level of the building may be occupied by commercial uses permitted under the GC (General Commercial) Zone;
- Vehicular parking will be internal to the building and will contain a minimum of one parking space per dwelling unit; and
- 16 parking spaces will be reserved for the commercial uses.

[Exhibit W-3, p. 234]

[46] Throughout the history of the Applicant's proposals to develop the Properties, which proposals have evolved from a 15-storey development in 2011; a 10-storey proposal in 2016; a 9-storey proposal in 2017; and, the 8-storey project ultimately approved by Community Council, there has been considerable public opposition expressed.

[47] Presentations and questions from members of the public at public information meetings, and the public hearings before Community Council, focused on the following:

- Safety concerns related to increased traffic along Prince Albert Road and Glenwood Avenue, including the number of points of access and egress and the busy intersection between the two streets;
- Concerns about the adequacy of parking, including visitor parking, and the potential for parking issues along Glenwood Avenue;
- Concerns about the adequacy of sidewalks along Glenwood Avenue;
- Compatibility concerns, including issues related to density, bulk, scale, lot coverage, lot size and height;
- Concerns with the adequacy of wind studies and the potential wind impacts on the Lake Banook paddling course;
- Concerns about the impact on the character of the neighbourhood, affordable housing, property values and privacy for nearly all residential properties;
- Concerns about commercial development encroaching on the residential neighbourhood in Glenwood Avenue.

[48] A review of the DMPS provisions Planning Staff deemed most relevant was included in the Staff Report. It was before Community Council on September 6, 2018,

when the Development Agreement was put forward for approval. An excerpt of this review, relating to the policies discussed which are most relevant to the issues in dispute, is included below:

ATTACHMENT D – REVIEW OF RELEVANT MUNICIPAL PLANNING STRATEGY POLICIES

Table 1: Most Relevant Dartmouth Municipal Planning Strategy Policies

Chapter 11 – Implementation	
Policy IP-1	
Policy Section	Staff Comment
(c) In considering zoning amendments and contract zoning, Council shall have regards to the following:	
(1) that the proposal is in conformance with the policies and intent of the Municipal Development Plan	This is the staff position for the reasons outlined in this report.
(2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal	<p>The proposal is for an 8-storey residential building (7 storeys + penthouse) with ground floor commercial uses (for the portion of the ground floor closer to Prince Albert Road). In terms of uses, the proposal is compatible with other surrounding uses. A good portion of adjacent lands fronting on Prince Albert Road are zoned C-2 (General Business). Current establishments on these lands include a Sobeys Fast Fuels gas station, a Needs Convenience store, a Robins Donuts, a Captain Submarine, a car repair garage (Yuille Auto Works), a NAPA Auto Parts store, and an Atlantic Superstore. In addition, there is an established hotel (Hearthstone Inn) located just to the east of the subject site on Lawrence Street. The residential nature of the rest of the proposed building is also in keeping, from a use perspective, with multi-unit residential buildings located on Lawrence Street, as well as the Banook Shores development located at 271-275 Prince Albert Road (two blocks to the west of the site). Multi-unit residential developments are also compatible with low-density residential, from a use perspective, when they are located on the edges of low-density residential areas and especially when they help to transition from a high-traffic commercial street as is the case with this portion of Prince Albert Road.</p> <p>In terms of bulk and scale, the building being proposed will be the tallest building in the general area when compared to what currently exists (the next highest building would be the Banook Shores development at 5 storeys). Staff advise that an 8-storey building (7 storeys +</p>

	<p>penthouse) is acceptable, in terms of compatible building height, for this location.</p> <p>Staff advise the impact of the proposed building on adjacent uses and the existing development form in the area will be minimized by how the bulk is distributed on the site, which can be summarized in three points:</p> <p>(1) The building will transition down in height towards #7 Glenwood Avenue (from 8 to 7 storeys and then to 4 storeys).</p> <p>(2) A change in grade and an approximate 6-metre landscaped buffer between the proposed mixed use building and #7 Glenwood Avenue will provide a further transition. This last design intervention will tend to hide the ground floor of the new building, making it look as if the new building is only 3 to 3 and a half storeys in height where it abuts the two-storey house located at #7 Glenwood Avenue.</p> <p>(3) The proposed building will also have two step backs in the massing of the building along Glenwood Avenue (above the ground floor and above the 6th storey), which will minimize the impact of the overall bulk of the building along this street.</p> <p>(4) The 8th storey penthouse will be located exclusively on the commercially-zoned parcel and will cover no more than 30% of the roof area.</p>
<p>(3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries</p>	<p>The applicant is proposing an approximate 6-metre landscaped buffer between the proposed building and the single-unit dwelling at #7 Glenwood Avenue. In addition, the applicant is proposing to transition the building down in height towards #7 Glenwood Avenue (from 8 to 7 storeys and then to 4 storeys). A change in grade within the approximate 6-metre landscaped buffer between the proposed mixed use building and #7 Glenwood Avenue will provide a further transition. This last design intervention will tend to hide the ground floor of the new building, making it look as if the new building is only 3 to 3 and a half storeys in height where it abuts the</p>

	<p>two-storey house located at #7 Glenwood Avenue.</p> <p>The proposed building will also have two step backs (above the ground floor and above the 6th storey) in the massing of the building along Glenwood Avenue, which will minimize the impact of the overall bulk of the building along this street. Staff believes the transitioning down to #7 Glenwood Avenue, as well as #6, #8 and #10 Glenwood Avenue (on the opposite side of the street) is enough to properly respect the existing low-density house form character of Glenwood Avenue.</p> <p>Section 3.10 of the draft development agreement requires that landscaping be provided around the proposed building.</p> <p>Section 3.7 of the draft development agreement requires the screening of mechanical equipment, propane tanks, electrical transformers and standby power generators. Section 3.13 of the draft development agreement requires that solid waste receptacles be located within the building. No open storage is enabled under the draft development agreement.</p> <p>The only site access for vehicles will be from a driveway on Glenwood Avenue. As part of the redevelopment of the site, the developer will be closing an existing driveway which is located within the Prince Albert Road/ Grahams Grove intersection. This modification removes a conflict point from Prince Albert Road resulting in all site traffic being directed to a stop-controlled intersection which has good visibility in all directions.</p>
--	---

(4) that the proposal is not premature or inappropriate by reason of:

...

(iv) the adequacy of transportation networks in adjacent to or leading to the development	See Staff Report Discussion sections pertaining to traffic, intersection safety, and parking. HRM Traffic Management has reviewed the analysis and has accepted the findings of a submitted TIS. It also concluded that upgrades to the existing stop-controlled intersection are not warranted.
(v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas	The closest water body from the subject site is Lake Banook. However, there is a minimum distance of 135 metres that separates the site from Lake Banook. Additionally, a four-lane road and other developed areas are located between the site and Lake Banook. Therefore, the proposed development is not expected to have a direct impact on the erosion and sedimentation conditions of the Lake. Likewise, the proposed uses are not expected to pose a contamination hazard for the Lake. The closest watercourse to the subject site is located approximately 85 metres away in a southwesterly direction. The proposed development is also not expected to impact this watercourse.

...

<p>(6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or nearby land uses and public facilities. Such controls may relate to, but are not limited to, the following:</p>	
<p>(i) type of use, density, and phasing</p>	<p>Sections 3.3 and 3.4 of the draft development agreement include controls over use and density. No controls over phasing were incorporated within the draft development agreement, however, as the proposed building is intended to proceed under a single construction phase.</p>
<p>(ii) emissions including air, water, noise</p>	<p>The proposal is for an 8-storey mixed use residential and commercial building. Staff does not anticipate any noise emissions beyond what could be expected from such a use. Specific controls were therefore not included in the draft development agreement.</p>
<p>(iii) traffic generation, access to and egress from the site, and parking</p>	<p>Section 3.8 of the draft development agreement specifies controls in regards to traffic generation, access to and egress from the site, as well as parking. These items are not anticipated to conflict with adjacent or nearby land uses.</p>

...

<p>(v) provisions for pedestrian movement and safety</p>	<p>There is a lack of sidewalks along Glenwood Avenue and the draft development agreement will require the developer to extend the existing sidewalk along the Glenwood Avenue frontage to the interior property line shared between the subject site and civic number 7 Glenwood Avenue.</p>
--	---

...

<p>(8) that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council</p>	<p>A public information meeting on a 10-storey version of this proposal was held on January 21, 2016. A public hearing on a 9-storey version of this proposal was held on December 7, 2017. Both these meetings helped in informing the current proposal, as well as providing an opportunity for the public to better understand the current proposal, the issues at stake, and the overall planning process.</p>
<p>(o) Apartment Building Development</p> <p>Careful consideration should be given to the construction of apartment buildings throughout the City. Recently, concerns have been expressed about the exterior design, density, concentration, site treatment, massing and traffic issues as they relate to apartment development. These issues could be</p>	

addressed by the Development Agreement process and would also permit public involvement in the evaluation of the proposed development.	
<p>Policy IP-5 It shall be the intention of City Council to require Development Agreements for apartment building development in R-3, R-4, C-2, MF-1 and GC Zones. Council shall require a site plan, building elevations and perspective drawings for the apartment development indicating such things as the size of the building(s), access & egress to the site, landscaping, amenity space, parking and location of site features such as refuse containers and fuel storage tanks for the building.</p> <p>In considering the approval of such Agreements, Council shall consider the following criteria:</p>	<p>Policy IP-5 applies as the request is to enter into a development agreement to allow for an 8-storey mixed use residential and commercial building on a site that has both GC (General Commercial) and R-4 (Multiple Family Residential – High Density) zoning.</p>
(a) adequacy of the exterior design, height, bulk and scale of the new apartment development with respect to its compatibility with the existing neighbourhood;	Refer to earlier policy analysis provided regarding Policy IP-1 and to the Discussion section of the Staff Report.
(b) adequacy of controls placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:	
(i) the height, size, bulk, density, lot coverage, lot size and lot frontage of any proposed building;	<p>Controls for these elements are contained throughout the draft development agreement, as follow:</p> <ul style="list-style-type: none"> • Height (Sections 3.1, 3.3, and 3.5, and Schedules D to G) • Size and bulk (Sections 3.1 and 3.5, Schedule B, and Schedules D to G) • Density (Section 3.4) • Lot coverage (Sections 3.1 and 3.5, and Schedule B) • Lot size and frontage (Schedules A and B) <p>Staff believes there are adequate controls to reduce conflict with adjacent or nearby uses.</p>
(ii) traffic generation, access to and egress from the site; and	Section 3.8 of the draft development agreement specifies controls in regards to traffic generation, access to and egress from the site. These items are not anticipated to conflict with adjacent or nearby uses.
(iii) parking;	Section 3.8 of the draft development agreement specifies controls in regards to parking. Vehicular parking will be provided via internal parking levels containing a minimum of 106 parking spaces.
(c) adequacy or proximity of schools, recreation areas and other community facilities;	The subject site is located in close proximity to Alderney Elementary School, which

	<p>accommodates students from grades Primary to 6. As of September 2017, the school was operating under 50% of available capacity. The subject site is also located in close proximity to Kiwanis Grahams Grove Park, Lake Banook Regional Park, Silvers Hill Park and Lions Beach Park; the Dartmouth Multi-use Trail which is part of the Trans Canada Trail system; and both the Mic Mac Amateur Aquatic Club and the Banook Canoe Club.</p>
<p>(d) adequacy of transportation networks in, adjacent to, and leading to the development;</p>	<p>See Staff Report Discussion sections pertaining to traffic, intersection safety, and parking. HRM Traffic Management has reviewed the analysis and has accepted the findings of a submitted TIS. It also concluded that upgrades to the existing stop-controlled intersection are not warranted.</p>
<p>(e) adequacy of useable amenity space and attractive landscaping such that the needs of a variety of household types are addressed and the development is aesthetically pleasing;</p>	<p>Refer to earlier policy analysis provided regarding Policy IP-1 and to the Discussion section of the Staff Report.</p>
<p>(f) that mature trees and other natural site features are preserved where possible;</p>	<p>There are six mature trees along the Prince Albert Road frontage. It is the intent of the applicant to preserve as many of these trees as possible. The applicant is also proposing the planting of new trees as part of the landscape plan attached to the draft development agreement. There are no other valuable natural features associated with the subject site.</p>
<p>(g) adequacy of buffering from abutting land uses;</p>	<p>The abutting land uses from the subject site are a combination of a retail fuel outlet, convenience store, and two restaurants at 303 Prince Albert Road (Sobeys Fast Fuels/Needs Convenience/Robins Donuts/Captain Submarine), a garage at 311 Prince Albert Road (Yuille Auto Works), a 4-storey hotel at 313 Lawrence Street (Hearthstone Inn), a single-unit dwelling at #7 Glenwood Avenue, and four single-unit dwellings along the opposite side of Glenwood Avenue (4, 6, 8 and 10 Glenwood Avenue).</p> <p>The developer is proposing an approximate 6-metre landscaped buffer between the proposed building and the shared interior property line with #7 Glenwood Avenue. In addition, the developer is proposing to transition the building down in height towards #7 Glenwood Avenue (from 8 to 7 storeys and then to 4 storeys). A change in grade within the approximate 6-metre</p>

	landscaped buffer between the proposed mixed use building and #7 Glenwood Avenue will provide a further transition. This last design intervention will tend to hide the ground floor of the new building, making it look as if the new building is only 3 to 3 and a half storeys in height where it abuts the two-storey house located at #7 Glenwood Avenue.
(h) the impacts of altering land levels as it relates to drainage, aesthetics and soil stability and slope treatment; and	The developer will need to abide with section 5.1 of the draft development agreement, which deals with Erosion and Sedimentation and Grading Plans. Grading and stormwater management plans will be reviewed by HRM Development Engineering at the permit stage.
(i) the Land Use By-law amendment criteria as set out in Policy IP-1(c).	This is discussed earlier in this document.
<p>(q) <u>Lake Banook Canoe Course</u> Lake Banook canoe course is one of the best natural canoe courses in the world and it hosts both national and international canoe events. It is the only course of its kind in Atlantic Canada. The paddling and rowing regattas that occur on the lake are major recreational events and have a significant historical, economic and social benefits to the region. In 2004, the importance of protecting the Lake Banook Canoe Course from large-scale development was highlighted in a Wind Impact Study on the Lake Banook Canoe Course for two developments abutting the lake. Thus, wind impacts resulting from large building developments which prevent the course from holding national and international regattas would have significant regional impacts.</p> <p>Due to the importance of protecting the Lake Banook canoe course, the potential for large-scale buildings to negatively impact the course and the lack of height restrictions for most land uses, Council shall adopt regulations to restrict building heights around Lake Banook. Further, any height restriction shall apply to all buildings, regardless of how they are developed (by right or through a discretionary approval process).</p>	
Policy IP-9 It shall be a policy of Council to apply a maximum height restriction through the Land Use By-law to all buildings situated within "Lake Banook Canoe Course Area" as identified on Map 9s"	The subject site falls just outside the "Lake Banook Canoe Course Area" as identified on Map 9s.
Policy IP-10 Further to Policy IP-9, Council shall not consider any rezoning or development agreement application for buildings having a height greater than 35 feet within the Lake Banook Canoe Course Area. Within the Lake Banook Canoe Course Area, there are instances where buildings exceed the maximum height restriction. Generally such buildings would be made non-conforming structures and subject to the provisions of the	The 35-foot height restriction does not apply to the subject site, as it falls just outside the "Lake Banook Canoe Course Area" as identified on Map 9s.

<p>Municipal Government Act. It is not the intention of Council to require these buildings to comply with the new height restriction nor be prevented from being replaced. Instead, Council objective is to maintain current height conditions and allow for modifications and replacement of existing buildings.</p>	
---	--

[Exhibit W-3, pp. 279-288]

[49] Mr. Ouellet's Staff Report also provided certain responses to concerns raised by the public. Following a public hearing session, and an opportunity to question Mr. Ouellet, the report was considered by Community Council.

[50] After debate on the motion, a transcript of which was provided to the Board by the Appellant, Community Council accepted Planning Staff's recommendation and approved the Development Agreement.

V EVENING SESSION / LETTERS OF COMMENT

[51] The Board's advertisement of the Notice of Hearing in this matter invited interested parties to submit letters of comment to the Board by November 30, 2018. The Board received 55 letters of comment. All writers opposed the decision to approve the Development Agreement.

[52] Many of the letters included some of the same arguments and opinion evidence presented by the Appellant. The main concerns and common themes raised in the letters can be summarized as follows:

- Concerns about increased traffic and safety issues; including pedestrian safety issues;

- Concerns about compatibility with the neighbourhood; mainly scale, density, height, bulk, mass, size, lot size and lot coverage;
- Concerns that the appropriate perspective drawings were not provided to Community Council;
- Concerns the proposed project was outside the parameters of the Draft Centre Plan;
- Concerns with the adequacy of wind studies and potential negative impact on the Lake Banook paddling course;
- Concerns about compatibility with the abutting small residential dwelling;
- Concerns about noise, nuisance, loss of privacy and reduction in property values;
- Concerns related to parking, including visitor parking;
- Concerns related to the lack of adequate sidewalks on Glenwood Avenue;
- Concerns related to the quality and character of the neighbourhood and the impact on affordable housing.

[53] An evening session was held on December 10, 2018 at the Board's offices. Seven persons appeared before the Board. The speakers were passionate and eloquent. They reiterated many of the same concerns expressed in the letters of comment. They all asked the Board to allow the Appeal.

VI OPINION EVIDENCE

1. Preliminary Motion – Expert Evidence Relied on by the Appellant

[54] The only witness called by the Appellant was Maurice E. Lloyd, P.Eng, FCIP, LPP, who testified in relation to a report which was dated on October 26, 2018

(Lloyd Report). A redacted version of the report was filed on December 6, 2018, following the Board's rulings in a preliminary hearing which was held on November 16, 2018.

[55] The Lloyd Report was authored by Mr. Lloyd and Lorena MacDonald, Realtor, Associate Broker. The Appellant had a qualification statement for Ms. MacDonald, in accordance with the Board's procedure as set out in the Hearing Order, which said:

to be qualified as a land use planner capable of giving evidence on the subject of the intent and effect of the relevant Municipal Planning Strategy, Land Use Bylaws, draft regulation and HRM municipal policy documents and community engagement for the neighbourhood surrounding Lake Banook, as well as real estate market conditions and patterns of use within Dartmouth and the extent to which the Community Council's decision to approve the proposed Prince Albert Development fails to comply with the intent of the Municipal Planning Strategy.

[Exhibit W-5(ii), p. 73]

[56] HRM objected to Ms. Macdonald being qualified as an expert in planning matters.

[57] In its letter decision dated November 22, 2018, the Board decided Ms. MacDonald would not be qualified with respect to planning matters:

Ms. MacDonald appeared before the Board, and, in response to questions from Mr. Weatherhead, and Ms. MacLaurin, went through her training and extensive experience in the real estate and development realm.

Expert opinion evidence is an exception to the common law rules of evidence which require that witnesses testify as to facts, and not the inferences or opinions to be deduced from these facts. Where there is an area that calls for special knowledge or skill, an expert witness is "...allowed to state his opinion about such matters, provided he is expert in them..." (see *White Burgess Langille Inman v. Abbott and Haliburton Co.*, [2015] 2 SCR 182, para. [15]).

By virtue of s. 19 of the Utility and Review Board Act, SNS 1992, c. 11, as amended (URB Act), the Board does not have to strictly follow the rules of evidence and can admit evidence that does not necessarily comply with those rules, if it "...may assist it to deal with the matter before the Board...".

In the case of expert evidence, in planning appeals, where the Board has considerable experience in the interpretation of municipal planning strategies and bylaws, unless an expert has sufficient expertise in the subject areas, the evidence will not ordinarily be of assistance to the Board. This said, expertise need not be obtained through formal training, but may be acquired by experience.

In the case of Ms. MacDonald, who has no formal training in planning matters, while it is clear she is a highly qualified individual in her field, that field is simply not in the area of planning. Her field is that of realtor, broker and a consultant to property developers seeking

to purchase property for development purposes. While this does involve some knowledge of zoning and municipal planning strategies, to determine what land uses are, or could be, permitted on particular parcels, it does not rise to the level of expertise required to qualify her as an expert in planning matters.

Her volunteer work in community planning appears primarily focused on providing community input into the Subject Property, which is the subject matter of this proceeding. It is not broad enough to allow the Board to find she has developed a sufficient degree of expertise in the planning field. As well, in this regard, the wording “community engagement for the neighbourhood surrounding Lake Banook” is not a recognized field of expertise, such as to allow for such qualification.

Ms. MacDonald can be qualified as “an expert in real estate market conditions and patterns of use within Dartmouth.”

The Board notes that while HRM raised concerns about Ms. MacDonald’s objectivity, this appeared primarily related to planning matter expertise. In any event, the Board is satisfied Ms. MacDonald has displayed sufficient objectivity, to meet the threshold test set out in White Burgess, to be qualified as an expert as discussed above. Any residual concerns can be addressed when assessing weight.

In the end result, however, the limit on Ms. MacDonald’s qualification statement does not mean that the portions of the Experts’ Report authored by Ms. MacDonald need be redacted or expunged.

Mr. Weatherhead, at the request of the Board, took Ms. MacDonald through the portions of the Experts’ Report she wrote. The list of the various sections is as follows: 1.1.4, 1.4.1, 1.4.2, 2.1, 2.2, 2.3, 2.3.2, 2.3.4, 3.1, 3.3, 3.4.1, 3.4.2, 3.4.3 and 3.4.4.

Much of Ms. MacDonald’s writing is factual in nature, or relates to what can be described as fact gathering. It also includes charts, mathematical calculations, and comparisons, related to such matters as floor area ratio and building comparables. There is also an assessment of the viability of a hotel on the Subject Property, and a discussion of wood frame construction. There are comparisons with other buildings in the community. Ms. MacDonald also discusses the rationale of certain councillors who voted in favor of the development agreement, and the split motion discussed in more detail later.

To the extent that any planning opinions are expressed in the sections written by Ms. MacDonald, and that Mr. Lloyd adopts them, they would properly be included in the Report, unless otherwise excluded by the remainder of this Decision.

As Mr. Lloyd co-authored the Experts’ Report, the Board is prepared to accept at this stage, that he adopted any planning opinions expressed therein. If this turns out not to be the case when Mr. Lloyd is questioned on the Experts’ Report during the hearing on the merits, then those planning opinions authored by Ms. MacDonald, if any, which are not adopted by Mr. Lloyd will be given no weight.

[Board’s letter decision dated November 22, 2018, p. 2-4]

[58] While Ms. MacDonald continued to be listed as an author in the redacted version of the report, she was not required, for the purposes of cross-examination, by HRM or the Applicant.

[59] HRM had initially objected to some of Mr. Lloyd's qualifications. Prior to the November 16, 2018 preliminary hearing, Mr. Weatherhead and Ms. MacLaurin agreed to the wording of Mr. Lloyd's qualification statement. The Board therefore ruled as follows:

Otherwise, the Board has reviewed Mr. Lloyd's qualifications and is satisfied that the agreed upon wording, with the addition of one underlined phrase, as set out below, is the appropriate qualification statement to be used and accepted in relation to Mr. Lloyd in this proceeding:

To be qualified as a land use planner capable of giving evidence on the subject of the intent of the relevant Municipal Planning Strategy, Land Use Bylaws, and enabling legislation, as well as traffic modelling, and as an engineer capable of raising basic principles of civil engineering related to wind, and the extent to which, in his opinion, the Community Council's decision to approve the proposed Prince Albert Development fails to comply with the intent of the Municipal Planning Strategy. [Emphasis in original]

[Board's Decision Letter dated November 22, 2018, p. 2]

[60] There were extensive references to the Draft Centre Plan in the original Lloyd Report. The Board ruled that the Draft Centre Plan could not be used as an interpretive tool in relation to the current municipal planning strategy provisions. The full reasons for this decision are set out in the Board's November 22, 2018 decision letter.

[61] The Board addressed how it proposed to deal with the references to the Draft Centre Plan in its November 22, 2018 preliminary decision:

...

HRM requests that references to the Draft Centre Plan be redacted from the Experts' Report. There are approximately 60 to 70 references to the Draft Centre Plan in the Experts' Report. HRM has not identified the extent of the redactions it seeks.

Some references are in quotes from Community Council members, which also form part of the record. The Board does not propose to redact direct quotes from the transcript of the Community Council meeting. Some of the references to the Draft Centre Plan are intermingled with other aspects which are not objectionable.

In these circumstances, the Board has decided not to attempt a redaction without meaningful input from the parties. Rather, given the late date, with HRM's evidence due on November 28, 2018, the Board will give no weight to those portions of the Experts' Report which discuss the Draft Centre Plan in any context where the Board is being asked to use it as an interpretive tool.

This said, this ruling may create gaps in the flow and reasoning of the Expert's Report. Without, in any way, pre-judging the issue, the Board is prepared to consider submissions

from both parties, should the Appellant seek to file a revised report, although this would have an obvious impact on the proposed timeline and scheduled hearing.

[Board's Decision Letter dated November 22, 2018, p. 8]

[62] No further submissions were received. Rather than a revised report, a redacted version of the original Lloyd Report was filed with the Board.

2. Lloyd Report

[63] The Lloyd Report addresses the interrelationship between the RMPS and the DMPS. Mr. Lloyd says that community consultation pursuant to RMPS Policy G-1 has not been completed; nor has the community visioning process contemplated by RMPS Policy G-3. It is his opinion that in these circumstances, "moderation is the most reasonable metric to guide development."

[64] Mr. Lloyd cites this Board's 2012 decision involving the same Applicant and Properties, for the proposition that where the community visioning process and secondary planning process have not been completed "it is the existing DMPS policies, along with the RMPS policies, against which Council's decision must be measured". [see 2012 NSUARB 155, para. 214]

[65] Mr. Lloyd interprets this to mean that "...the MPS may contain provisions more stringent than the RMPS and, in that case, the provisions of the DMPS will prevail and vice versa".

[66] The Lloyd Report indicates the Graham's Corner neighbourhood, which in his opinion encompasses the Properties, is located in the Regional Centre Type, within the Urban Settlement Designation, as shown on Map 1 of RMPS.

[67] Given the designation of the Graham's Corner neighbourhood in the RMPS, in Mr. Lloyd's opinion, the land uses in Table 3-1 for Regional Centres are relevant. He

says since no opportunity sites have been identified, the policy direction given in the RMPS is that low to medium density residential uses are the applicable land use characteristic in established neighbourhoods.

[68] Mr. Lloyd makes specific reference to Policy S-9 of the RMPS, which directs that the preparation of secondary planning strategies must be done “with consideration” of the various matters described in section 3.3 of the RMPS, in which Table 3-1 is located.

[69] Mr. Lloyd says the relevant policies for regulating land use in the Graham’s Corner neighbourhood are those in the DMPS, with the DLUB as the implementation mechanism.

[70] With respect to the DMPS, while making numerous references to alleged errors and irregularities by Planning Staff and Community Council, the basic premise of Mr. Lloyd’s opinion is that the proposed project is not consistent with the DMPS because:

- The height, size, level, density, lot coverage, lot size and lot frontage are not compatible with the existing neighbourhood and were not properly considered by Community Council. Insufficient controls are in place in the Development Agreement to make the development compatible with the surrounding neighbourhood, contrary to DMPS Policies IP-5(a), IP-5(b)(i) and IP-5(b)(ii);
- As no perspective drawings were provided by the Applicant, as required by the preamble to Policy IP-5(a), Community Council could not adequately assess the proposal in relation to the relevant policies;
- The 35-foot minimum building height in the Lake Banook Canoe Course Area, immediately adjacent to the Properties, as set out in DMPS Policy IP-9, and DMPS Policy R-6 relating to protecting and developing recreation areas on city-owned

lands adjacent to lakes, provides policy direction to Council to undertake appropriate wind studies when development is proposed near Lake Banook;

- The wind studies in the planning file do not address the proposal before Community Council, and are inadequate in any event;
- The DLUB related to the GC zone and the R-4 zone should be applied, or at least provide direction as to height, lot coverage, density, and other impacts of residential and commercial development pursuant to a Development Agreement.
- The metrics in the DLUB show the proposed apartment building is well beyond what is compatible with this neighbourhood
- A chart was prepared comparing the existing buildings in the general vicinity of the Properties. Mr. Lloyd opined that the proposal was not in line with other setbacks, lot coverage and the concept of floor area ratio (FAR);
- Mr. Lloyd explained the FAR concept which results from calculations related to the volume of the building by floor;
- A preliminary report from HRM council in 2004 showed high density does not necessarily correlate to less costs to provide municipal services;
- The comparables utilized by Planning Staff to assess the proposal were not reasonable; and,
- The traffic study before Community Council did not adequately address safety issues related to heavy traffic on Prince Albert Road, and the numerous points of access and egress close to the Properties.

[71] While Mr. Lloyd's qualifications as a planner were not challenged, given his long experience in the field, HRM and the Applicant said his opinion evidence related to

wind studies went beyond his expertise, and what was expressed in the agreed upon qualification statement.

[72] As well, after highlighting Mr. Lloyd's extensive activities in opposition to developments proposed by the Applicant on the Properties, from 2012 onward, Ms. Rubin argued Mr. Ouellet's evidence should be preferred to that of Mr. Lloyd.

3. Ouellet Report

[73] The only witness called by HRM was Mr. Ouellet. The Board notes the Applicant only became involved in the proceeding after certain evidentiary filing deadlines had passed. The Applicant did not pre-file nor call any evidence.

[74] Mr. Ouellet prepared a report dated November 27, 2018, which was filed with the Board on November 28, 2018 (Ouellet Report)

[75] HRM's pre-filed proposed qualification statement said:

Luc Ouellet - Qualified as an expert in land use planning, capable of giving expert opinion evidence on land use planning matters, including the intent of the Regional Municipal Planning Strategy (RMPS), the Dartmouth Municipal Planning Strategy (DMPS) and the Dartmouth Land Use By-Law (LUB) and the extent to which Harbour East- Marine Drive Community Council's decision of September 6, 2018 with respect to a development agreement for an 8 - storey multiunit residential building containing ground floor commercial uses on the combined-sides located at 307 Prince Albert Road and 5 Glenwood Avenue, Dartmouth reasonably carries out the intent of the MPS.

[Exhibit W-9(i), p. 35]

[76] In a filing on December 6, 2018, the Appellant challenged Mr. Ouellet's qualifications to provide opinion evidence on the effect of wind on Lake Banook, and sought to have the portions of his report dealing with wind effects redacted.

[77] As the hearing was scheduled to commence on December 10, 2018, the Board decided this issue would be addressed when HRM sought to qualify Mr. Ouellet.

[78] At the hearing, Mr. Pineo, who was acting for the Appellant, while recognizing the Board was not bound by the common law rules of evidence by virtue of s. 19 of the *Utility and Review Board Act*, S.N.S. 1992, c. 11, as amended (*UARB Act*), sought to have Mr. Ouellet's entire report struck, on the basis he lacked the independence and objectivity required of an expert. As well, he submitted Mr. Ouellet was offering an opinion on the very issue the Board had to determine.

[79] The Board held that Mr. Ouellet met the initial threshold test outlined in *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 (*WBLI*), and would address any further concerns with respect to impartiality and advocacy when addressing weight. The Board reserved the right to expand on its reasons in its written decision. Therefore, the report was not struck.

[80] Mr. Ouellet was therefore qualified to provide expert evidence, as he has been in past proceedings before the Board.

[81] Issues of impartiality, advocacy, and offering opinions on the very issue the Board has to decide, will be addressed in more detail in the Board's analysis and findings.

[82] The Ouellet Report confirms that Mr. Ouellet was the municipal planner assigned to the Applicant's proposed development from March 3, 2016, to September 6, 2018. He confirmed that the professional opinion, which he had laid out in the Staff Report, which was before the Community Council considering the Development Agreement on September 6, 2018, had not changed.

[83] Mr. Ouellet included tables which essentially repeat what was contained in the Staff Report. In addition, in his opinion, the only RMPS policy which was relevant to this matter is Policy G-15. He opined that the criteria set out in Policy G-15 are already

covered under DMPS Policies IP-5 and IP-1(c). Mr. Ouellet also undertook an analysis and response to the various issues raised in the Appellant's Notice of Appeal and the Lloyd Report.

[84] The basic premise of his opinion in response to the Appellant's filings is summarized below:

- There can be differing opinions on issues of height, bulk, and scale related to compatibility;
- There can be differing opinions on what level of controls in a development agreement is sufficient to reduce conflict with nearby uses with respect to height, size, density, traffic access and egress;
- The relevant policies are broadly worded, without absolute numbers, sliding scales or stipulating a particular range of appropriate metrics;
- The interpretation of the policy set rests with the eye of the beholder, which, in this case, is Community Council, which has considerable discretion;
- As the Properties are not within the boundary of the Lake Banook Canoe Course Area, Policies IP-9 and IP-10 and IP-11 do not apply;
- While Community Council could be guided by DLUB provisions, it is not bound by them where the project proceeds by development agreement;
- The DLUB provisions have continued relevance, despite the need to proceed by development agreement for apartment buildings, because they are still applicable to R-3 and G-2 zones in the Main Street Designation;
- The only policy which specifically requires a wind study is Policy H-16, which does not apply to the Properties.

[85] In Mr. Ouellet's opinion, there are, therefore, no RMPS or DMPS provisions applicable to the Properties which require a wind study. While Community Council can still properly consider potential negative wind impacts, in this case, Mr. Ouellet did not believe it was necessary.

VII ANALYSIS AND FINDINGS

1. Burden and Standard of Proof

[86] The burden of proof is on the Appellant to show, on a balance of probabilities, that the decision of Community Council to approve the Development Agreement does not reasonably carry out the intent of the DMPS, or any relevant provisions of the RMPS.

2. Scope of Appeal and Standard of Review of Community Council's decision

[87] The Board's jurisdiction in relation to an appeal of Community Council's decision to approve a Development Agreement is set out in s. 262(2) of the *HRM Charter*:

(2) The approval, or refusal to approve, and the amendment, or refusal to amend, a development agreement may be appealed to the Board by
(a) an aggrieved person;

...

[88] Section 265(1) of the *HRM Charter* limits the scope of an appeal before the Board. It says:

265 (1) An aggrieved person or an applicant may only appeal

...

(b) the approval or refusal of a development agreement or the approval of an amendment to a development agreement, on the grounds that the decision of the Council does not reasonably carry out the intent of the municipal planning strategy;

[89] The Board's remedial powers, and the restrictions on the exercise of these powers, are prescribed in ss. 267(1) and 267(2) of the *HRM Charter*, which state:

(1) The Board may

- (a) confirm the decision appealed from;
- (b) allow the appeal by reversing the decision of the Council to amend the land-use by-law or to approve or amend a development agreement;

...

(2) The Board may not allow an appeal unless it determines that the decision of the Council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law

[90] Many of the principles applicable to the exercise of the Board's jurisdiction in planning appeals were summarized in *Archibald v. Nova Scotia (Utility and Review Board)*, 2010 NSCA 27 (CanLII), para. 24, where Fichaud, J.A., said:

(1) The Board usually is the first tribunal to hear sworn testimony with cross-examination respecting the proposal. The Board should undertake a thorough factual analysis to determine the nature of the proposal in the context of the MPS and any applicable land use by-law.

(2) The appellant to the Board bears the onus to prove the facts that establish, on a balance of probabilities, that the Council's decision does not reasonably carry out the intent of the MPS.

(3) The premise, stated in s. 190(b) of the *MGA*, for the formulation and application of planning policies is that the municipality be the primary steward of planning, through municipal planning strategies and land use by-laws.

(4) The Board's role is to decide an appeal from the Council's decision. So the Board should not just launch its own detached planning analysis that disregards the Council's view. Rather, the Board should address the Council's conclusion and reasons and ask whether the Council's decision does or does not reasonably carry out the intent of the MPS. Later (¶ 30) I will elaborate on the treatment of the Council's reasons.

(5) There may be more than one conclusion that reasonably carries out the intent of the MPS. If so, the consistency of the proposed development with the MPS does not automatically establish the converse proposition, that the Council's refusal is inconsistent with the MPS.

(6) The Board should not interpret the MPS formalistically, but pragmatically and purposively, to make the MPS work as a whole. From this vantage, the Board should gather the MPS' intent on the relevant issue, then determine whether the Council's decision reasonably carries out that intent.

(7) When planning perspectives in the MPS intersect, the elected and democratically accountable Council may be expected to make a value judgment. Accordingly, barring an error of fact or principle, the Board should defer to the Council's compromises of conflicting intentions in the MPS and to the Council's choices on question begging terms such as "appropriate" development or "undue" impact. By this, I do not suggest that the Board should apply a different standard of review for such matters. The Board's statutory mandate remains to determine whether the Council's decision reasonably carries out the intent of the MPS. But the intent of the MPS may be that the Council, and nobody else, choose between conflicting policies that appear in the

MPS. This deference to Council's difficult choices between conflicting policies is not a license for Council to make *ad hoc* decisions unguided by principle. As Justice Cromwell said, the "purpose of the MPS is not to confer authority on Council but to provide policy guidance on how Council's authority should be exercised" (*Lewis v. North West Community Council of HRM*, 2001 NSCA 98 (CanLII), ¶ 19). So, if the MPS' intent is ascertainable, there is no deep shade for Council to illuminate, and the Board is unconstrained in determining whether the Council's decision reasonably bears that intent.

(8) The intent of the MPS is ascertained primarily from the wording of the written strategy. The search for intent also may be assisted by the enabling legislation that defines the municipality's mandate in the formulation of planning strategy. For instance ss. 219(1) and (3) of the *MGA* direct the municipality to adopt a land use by-law "to carry out the intent of the municipal planning strategy" at "the same time" as the municipality adopts the MPS. The reflexivity between the MPS and a concurrently adopted land use by-law means the contemporaneous land use by-law may assist the Board to deduce the intent of the MPS. A land use by-law enacted after the MPS may offer little to the interpretation of the MPS.

[91] The Board has determined that a liberal and purposive approach to statutory interpretation, considering the municipal planning strategy as a whole, applies to the interpretation of the *HRM Charter* and planning documents, see, for example, *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)*, [1994] N.S.J. 150.

[92] This approach is consistent with Section 9(1) of the *Interpretation Act*, R.S.N.S. 1989, c. 235, as amended (*IA*), which states:

9 (1) The law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning.

[93] In *Heritage Trust*, the Board was directed to defer to Community Council, if Council's decision was within an interpretation the language of the applicable municipal planning strategy could reasonably bear.

[94] The Nova Scotia Court of Appeal has provided further direction to the Board on its proper role in a planning appeal. In *Midtown Tavern & Grill Ltd. v. Nova Scotia (Utility and Review Board)*, 2006 NSCA 115 (CanLII), the Court stated in considering an appeal,

the Board must not substitute its own decision for that of Community Council. At para. 51 and 52, the Board's task was described as follows:

[51] To answer this question, the Board must embark upon a thorough fact-finding mission to determine the exact nature of the proposal in the context of the applicable MPS and corresponding by-laws. As in this case, this may include the reception of evidence as to the intent of the MPS.

[52] However the Board should not then take its body of decided facts and use this work product to conclude how it feels the MPS should be interpreted. In this regard, I agree with the developer. Instead, after completing its factual analysis, the Board should go immediately to Council's conclusion. The Board should then ask itself, based on the facts as determined, have the opponents established that Council's decision did not reasonably carry out the intent of the MPS?

3. Experts' Reports – Admissibility

[95] Both the Appellant and the Applicant challenged the impartiality of the expert who provided an opinion contrary to their respective positions. The Appellant initially sought to have Mr. Ouellet excluded. Following the Board's ruling refusing this request, the Appellant submitted Mr. Ouellet's opinion should be given little or no weight.

[96] The Applicant says that while not seeking to exclude his evidence, Mr. Lloyd's opinion should be afforded less weight than that of Mr. Ouellet.

a) Ouellet Report and Common Law Test

[97] In the Board's oral reasons denying the Appellant's motion to have the Ouellet Report excluded, the Board reserved the right to provide further reasons. These are those further reasons.

[98] In seeking to have Mr. Ouellet excluded, while acknowledging that the Board was not bound by the common law rules of evidence because of s. 19 of the *UARB Act*, Mr. Pineo argued that the principles set out in *WBLI* should be applied.

[99] Mr. Pineo submitted that Mr. Ouellet's report should not be admitted because:

- He was essentially defending his own opinion, which had previously been provided to Community Council;
- His report was argumentative and ventured into advocacy;
- He lacked the degree of impartiality required to provide an objective opinion which would be of assistance to the Board;
- He offered an opinion on the very issue the Board is called upon to determine.

[100] *WBLI* adopted the four-part threshold test set out in *R. v. Mohan*, [1994] 2 S.C.R. 9:

- Relevance;
- Necessity;
- Absence of an exclusionary rule; and
- A properly qualified expert.

[101] In addition, *WBLI* confirmed the trier of fact must perform a cost-benefit analysis to determine if otherwise admissible expert evidence should be excluded on the basis its prejudicial effect may outweigh its probative value.

[102] The main thrust of Mr. Pineo's argument related to whether Mr. Ouellet could properly be qualified as an expert because of his role before Community Council and the nature of his report.

[103] Given Mr. Ouellet's testimony in the qualification phase of his attendance, the Board was satisfied he had recognized and accepted his duty before the Board.

[104] Under the approach in *WBLI*, the Board still had to be satisfied Mr. Ouellet met the threshold test related to an expert's independence, impartiality, and absence of bias;

recognizing that expert evidence is not provided in a vacuum, but in the context of adversarial litigation.

[105] In assessing the expert's independence, the following can be gleaned from *WBLI*:

- The threshold test is not particularly onerous, and it will likely be quite rare that an expert's evidence will be excluded on this basis;
- The mere fact there is an interest or connection to the litigation does not determine the issue. It is a question of degree;
- Employment by a party is insufficient to exclude an expert, in and of itself;
- More concerning issues arise, but there is still no automatic exclusion, if the witness has a direct interest in the outcome of the litigation; the witness has a close, familial relationship to a party; the witness is exposed to potential liability, if the opinion is not accepted; and, the witness assumes the role of an advocate for a party.

[106] In this case, Mr. Ouellet has no financial interest in the outcome of the litigation. He will receive no financial gain if his opinions are accepted. He will incur no financial loss if his opinions are not accepted. There is also no evidence there will be any repercussions to his employment with HRM if his opinion is rejected, or that he is at risk of a professional liability claim.

[107] It may be that from a professional standpoint, Mr. Ouellet would like to have his original advice to Community Council upheld, as his opinion to the Board was essentially the same as the one he gave to Community Council. This said, one would anticipate,

from a professional reputation standpoint, any expert would rather have his opinion accepted than rejected.

[108] Mr. Ouellet has no close relationship with the Applicant of any type, and his relationship with HRM is one of employment, which does not disqualify him, given his function as a professional advisor.

[109] The area of most concern to the Board, highlighted by Mr. Pineo, was what could be termed language of advocacy. In responding to the issues raised by Mr. Weatherhead, in his Notice of Appeal, and to the Lloyd Report, Mr. Ouellet uses terms such as “argue”, “argument” and “argued”, when discussing his opinion (see for example, paras. [28], [41] and [48] of the Ouellet Report).

[110] While this language is unfortunate, as arguments are generally restricted to advocates advancing a position on behalf of parties, the Board finds that on a fair reading, the Ouellet Report does not stray into advocacy to any significant degree, so as to warrant exclusion.

[111] In fact, this appears to be primarily an issue of use of language, given that in paragraph [28], Mr. Ouellet discusses differing opinions, having previously used the word “argue”.

[112] Reading the evidence as a whole, the benefit of Mr. Ouellet’s expert report, in providing an overview of the basis of his opinion, and a response to some of the issues raised by the Appellant, and affording the parties an opportunity to question him on these issues, outweighs the errant use of language discussed above.

[113] The Board therefore finds that the threshold test for admissibility under the *WBLI* test has been met. Any remaining concerns related to independence and objectivity can be addressed by the Board in relation to weight.

[114] With respect to Mr. Ouellet offering an opinion on the very issue the Board is called upon to decide, there is no doubt that he offers the opinion that the Development Agreement "...was reasonably consistent with the Dartmouth MPS and the Regional Municipality Planning Strategy in force on the date of Council's decision."

[115] The Board notes the Lloyd Report offers the following opinion:

In our joint opinion, the Community Council decision to approve the proposed Development Agreement for a high rise apartment building fails to meet the intent of the Regional Municipal Planning Strategy (RMPS) and the Dartmouth Municipal Planning Strategy (DMPS).

[Exhibit W-11, p.67]

[116] In a planning appeal of this nature, the Board must decide whether or not the Appellant has shown, on a balance of probabilities, that Community Council's decision to approve the Development Agreement failed to reasonably carry out the intent of the RMPS and DMPS. Both the above opinions address this directly.

[117] As pointed out by Ms. Rubin, it has been the practice for many years for experts to provide this type of opinion, and for the Board to allow it. Ultimately, the Board can decide whether to accept all or part of any expert's opinion. While past practice does not mean it should be continued in perpetuity, the Board will not exclude the reports in their entirety because such an opinion is expressed.

[118] It is the rationale and reasons, and the cogency of the expert's reasoning, when looking at a municipal planning strategy as a whole, to which the Board attributes weight. The expert's opinion on the ultimate issue is not what leads the Board to a particular

conclusion. To the extent it is not supported by the record before the Board, and the Board's own interpretation of the relevant policies, it can simply be ignored.

b) Ouellet Report – s. 19 of the UARB Act

[119] Section 19 of the *UARB Act* says the Board:

...may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether or not the statement, document, information or matter...would be admissible as evidence in a court of law.

[120] This provision does not mean the Board must, or should, accept all evidence that is put before it. Further, the common law rules of evidence have been developed over time to address evidentiary issues that have arisen relating to, amongst other things, reliability, relevance and fairness. In fact, the Board entertains evidentiary arguments and often makes rulings based on common law rules of evidence.

[121] Yet s. 19 of the *UARB Act* is an important tool in the administrative process, as it recognizes the Board is not a court, and that its processes are often designed to achieve an efficient and expeditious result.

[122] Under the *HRM Charter*, the goal of the appeal process is to have the matter come to a hearing within 45 days of the Appeal Record being filed by HRM. While this time frame can be extended, if it is in the interests of justice to do so (and on occasion it cannot be accommodated by the parties involved in a planning appeal), it is still the intent of the legislation to address planning appeals as quickly as is practically possible.

[123] This means short time frames to prepare and respond to evidence filed. It means experts often do not have much time to prepare their reports. It may mean the opportunity to review language or edit reports is limited.

[124] It must be kept in mind that s. 266(1) of the *HRM Charter* required HRM to file an Appeal Record before the Board, which becomes a part of the record of this proceeding. The Staff Report, which was before Community Council, forms part of the record. This was the expert opinion by Mr. Ouellet to Community Council, where his job function was to provide an objective assessment as to whether the proposed Development Agreement should be approved. There is no evidence Mr. Ouellet did anything other than what it was his job to do.

[125] Therefore, Mr. Ouellet's opinion was already before the Board as a matter of law. It was of assistance to the Board to have Mr. Ouellet explain his rationale and explain whether or not the issues raised by the Lloyd Report, and the Appellant, have changed his opinion. This is opinion evidence. It has to be in a written report, as required under the Board's rules, so the Appellant will know the case to be met.

[126] Given his approach on the stand, and his understanding of his role before the Board, the benefit of having Mr. Ouellet prepare a report, and testifying in this proceeding, outweighed any risks associated with his prior involvement with the matter, his employment with HRM, and the use of some arguably argumentative language. In the circumstances of this matter, the Ouellet Report is also admissible under s. 19 of the *UARB Act*. The Board will address any potential concerns as a matter of weight.

c) Weight

[127] Ms. Rubin argued Mr. Ouellet's opinions should be given more weight than those of Mr. Lloyd. She submitted Mr. Lloyd lacked the true impartiality of an expert because of his extensive opposition to the development proposals on the Properties, and his role advocating against these.

[128] In addition to the arguments raised in relation to Mr. Ouellet's employment with HRM, his prior involvement with this file, and his alleged advocacy, Mr. Weatherhead submits Mr. Ouellet had no experience with the DMPS prior to this matter, compared to Mr. Lloyd's long history with planning in Dartmouth.

[129] In the end, when all these factors were considered, they have had little impact on the weight the Board has given to those items which it considers central to the Appeal. The Board has assigned more weight to aspects of Mr. Ouellet's evidence because it provided a more cogent analysis of the relationship between the DMPS provisions, in the context of the RMPS.

d) *The merits of the Appeal*

i) *Interrelationship and Conflicts – RMPS and DMPS*

[130] The DMPS dates back to 1978 and has been amended many times. In 2006, HRM adopted the RMPS, which sets out strategic overarching planning principles for HRM as a whole. Subsequent to the adoption of the RMPS, the DMPS became a secondary planning strategy. The RMPS was re-adopted in 2014 and has also seen some amendments since 2006.

[131] Policy IP-5 of the DMPS requires that any proposed multi-residential development in the R-3, R-4, C-2, MF-1 and GC zones proceed by way of a development agreement.

[132] The history of how this came to be is explained in the Board's previous decision in relation to the Properties:

[36] Up until 1991, high-rise development could occur in Dartmouth as of right, in the R-3 and R-4 Zones. The approval and construction of several tall apartment buildings in Dartmouth led to significant controversy. Included among these buildings were ones constructed in an area running from the west side of Lake Banook (i.e., on the opposite side of the lake from the subject property) down toward the Harbour.

[37] In 1991, Dartmouth City Council responded to the controversy by amending the DMPS to eliminate as of right development in the R-3 and R-4 Zones. Central to this decision was the addition of DMPS Policy IP-5 which in effect requires that multiple-family residential dwellings containing three or more units (hereinafter, "apartment buildings") can only be constructed through the use of a development agreement. DMPS Policy IP-5 is discussed at length in this decision, particularly in the part headed "Development Agreement." From 1991 onward, then, all apartment buildings in Dartmouth have required a development agreement.

[2012 NSUARB 155, pp. 11-12]

[133] The R-3 and R-4 zones were retained by HRM. In 2012, the Board found this surprising. DMPS Policy IP-5A, which was enacted subsequent to the Board's prior decision, says that "...within the Main Street Designation, Council shall permit apartment buildings through the Land Use By-law". Therefore, it is clear that these zones continue to serve a purpose.

[134] The use which should be made of the continued existence of the relevant DLUB by-laws for the R-4 and GC zones, in the context of this case, where the Properties are not located in the Main Street Designation, continues to be a source of disagreement between the parties, as it was in 2012.

[135] It is clear, as it was in 2012, that in considering this Appeal, the Board must have regard to both the DMPS and the RMPS.

[136] The Appellant argues that, given the hierarchy between the RMPS and the DMPS, as expressed in RMPS Policy G-7, when considering development agreements, conflicts between the RMPS and the DMPS must be resolved in favor of the RMPS provisions, if they are stricter.

[137] The Board would caution this is only true in the case of true conflict between the two policy documents. The RMPS provides overarching policy direction throughout HRM. Not surprisingly, different themes in the RMPS may focus HRM's attention in different directions.

[138] As well, s. 1.6.2 of the RMPS must always be kept in mind. It says the word “shall” describes mandatory action. The following discussion, however, of the term “shall consider” is important:

The term "shall consider" appears in the context of policies respecting secondary planning strategies, priorities plans. This term denotes the mandatory consideration of these strategies and plans but does not commit HRM to any approval, adoption or implementation of these strategies or plans.

[Exhibit W-8, p. 21]

[139] It is not entirely clear, what if any direct conflict between the RMPS and the DMPS the Appellant says this Appeal raises, given that a large part of his argument relates to “implied policies created by the interpreting between the RMPS, the DLUB, and the DMPS.” From the Board’s perspective, it is a matter of statutory interpretation whether one or more policies leads to an implication another should be interpreted in a particular way. It is not truly a question of conflict.

[140] The Appellant refers to RMPS Policy G-1. This relates to public information, consultation and engagement when developing programs and services. It does not conflict with DMPS policies and has little relevance to the interpretation of the policies relevant to this Appeal.

[141] RMPS Policy G-3, raised by the Appellant, relates to community visioning when preparing secondary strategies. It does not conflict with any of the relevant DMPS Policies.

[142] There was some dispute as to whether a community visioning process was completed for the area in which the Properties were located. It certainly appears, from Exhibits W-12, W-13, and W-14, that a visioning process was adopted by HRM Council for an area which includes Graham’s Corner, which Mr. Lloyd describes as the neighbourhood within which the Properties are located.

[143] However, as Ms. Rubin concedes in her written submissions, as any visioning process for Graham's Corner did not lead to secondary plan amendments, this visioning process provides no real assistance to the Board in this Appeal. In this respect, a visioning process resulting in the incorporation of the outcome in the DMPS remains incomplete, as it was in 2012.

[144] Although not entirely clear, there appears to be some suggestion in the Lloyd Report that RMPS Policy S-9, in combination with Table 3-1, would conflict with any interpretation of Policy IP-5, which allows a high-rise multi-unit residential property in the Graham's Corners neighbourhood.

[145] Firstly, while Policy S-9 might be mandatory in its requirement that secondary planning strategies be developed for the centres outlined in Table 3-1, it goes on to say that "...with consideration given to..." the objectives and characteristics set out in Table 3-1. Keeping in mind the wording of Policy 1.6.2 of the RMPS discussed above, this wording does not mandate that only low to medium density residential uses be permitted in established neighbourhoods, even if the Board were to accept that the neighbourhood surrounding the Properties was such a neighbourhood. Therefore, there is not true conflict between RMPS Policy S-9 and the DMPS.

[146] Both Mr. Ouellet and Mr. Lloyd are of the opinion RMPS Policy G-15 is relevant to the Board's analysis. This is a mandatory policy. However, the Board sees no conflict between this provision and the DMPS provisions relevant to the Appeal.

[147] In the end, while the other RMPS policies raised by the Appellant could, in appropriate circumstances, be used as interpretive tools when considering the DMPS,

only RMPS Policies S-9 and G-15 are of any real significance, when read in the context of the RMPS as a whole, and the Board sees no actual conflict in this case.

ii) Decision of Community Council – DMPS and DLUB analysis

[148] In *Archibald*, the Court of Appeal said that in the case of a refusal to approve a development agreement, where the scheme of the legislation requires written reasons be provided to an appellant, the Board should consider these written reasons pivotal to an appeal. While the Board is not restricted to those reasons when determining the outcome, focusing on the reasons prompts the Board to respect its appellate role.

[149] In this case, Community Council approved the proposed Development Agreement. The *HRM Charter* does not require written reasons be provided when approval is granted. There is no reason in principle why Community Council's reasons could not frame the Board's analysis, if they were ascertainable.

[150] This said, the Board agrees with Ms. Rubin and Ms. MacLaurin that comments made by individual councillors during the course of debate are not the reasons of Community Council. Community Council speaks with one voice. The decision of Community Council is expressed in the motion which was passed. That motion was "to approve the proposed development agreement, which shall be substantially in the same form as set out in Attachment A of the staff report dated June 20, 2018...".

[151] While the comments of individual councillors may provide some context, it must be kept in mind that debate is not the same thing as the formulation of reasons. Even if councillors express rationales which are deficient, Community Council's decision cannot be overturned unless the decision itself to approve the Development Agreement does not carry out the intent of the DMPS and RMPS.

[152] The main concern raised by the Appellant is not that a multi-unit residential building is proposed on the site. Rather, it is with the intensity of the use:

- The Appellant says the building is too high for the surrounding neighbourhood, and may create wind effects on Lake Banook;
- The Appellant submits the density created by a potential 90 units is not compatible with the neighbourhood;
- The Appellant says the density, scale, size, bulk, massing, lot coverage and lot size of the proposed apartment building all combine to make it incompatible with the neighbourhood, and there are no adequate controls to protect adjacent properties;
- The Appellant argues the proposed density will likely exacerbate existing traffic perils, the building being on Prince Albert Road, with its heavy traffic volume and many points of access and egress onto this busy street.

[153] The Appellant argues that Community Council failed to adequately address policy directions found not only in DMPS Policies IP-5 and I-P(1)(c), and RMPS Policy G- 15, which are, admittedly, central to the Appeal; but other policies and provisions which the Appellant argues imply or mandate further control restrictions in relation to the Properties, such as:

- RMPS Policies G-1, G-3 and S-9, the first two of which, as discussed, relate to community engagement and the latter of which incorporates certain parameters discussed in Chapter Three of the RMPS with respect to Opportunity Sites and low to medium density housing in established neighbourhoods not included in those sites;

- DMPS Policies R-6, IP-9 and IP-10, which the Appellant argues imply wind effects must be studied where apartment buildings are contemplated near the Lake Banook Canoe Course Area;
- The DLUB metrics and parameters in the R-4 zone, which the Appellant argues provide other actual or implied controls on the Properties.

[154] Having reviewed the evidence and submissions, the Board finds the primary policy set against which the decision of Community Council is to be assessed in this Appeal are DMPS Policies IP-5 and I-P(1)(c), together with RMPS G-15, which are directly applicable to development agreements. The Board will comment further on the other policies raised by the Appellant, as required.

iii) *The Building's Form*

[155] When one reads DMPS Policies IP-5, IP-1(c) and RMPS Policy G-15 as a whole, it is clear many of the subsections specify concerns with use, height, bulk, lot coverage, scale, massing, lot size and lot frontage, and how compatibility with the surrounding neighbourhood is to be achieved.

[156] These criteria address whether the proposal is “compatible and consistent with adjacent uses and the existing development form”; the “adequacy” of the proposal in relation to its “compatibility with the existing neighbourhood”; the “adequacy of controls....to reduce conflict with adjacent or nearby land uses...”.

[157] These terms do not provide absolute parameters and leave considerable discretion to Community Council to make value judgements as to what is appropriate.

[158] If Community Council's decision addresses these built form and compatibility issues in a manner which is reasonably consistent with the RMPS and DMPS, interpreting

the relevant policies as whole, following the interpretation principles outlined in the case law, in a way the language can reasonably bear, this Board will not interfere.

[159] In this case, while the DLUB R-4 zone provisions might provide some limited assistance to Community Council, they were not enacted contemporaneously with the DMPS policies, and do not mandate any particular result.

[160] As well, while the height restrictions in the Lake Banook Race Course Area may have preserved an area in this general neighbourhood which, along with Glenwood Avenue, has a low-rise built form, there are two buildings nearby, one of which is four storeys high and the other five storeys high.

[161] Community Council had before it, in the Staff Report, a good description of the proposed project. The Staff Report pointed out this would be the tallest building in the general area. The available plans showed the extent of the lot coverage and the lot size. Scale, bulk and massing could be assessed from the plans, specifications and drawings.

[162] The height transitions, grading, step backs, buffering and landscaping measures provided in the Development Agreement, and their impact on the adjacent properties, were succinctly described in the Staff Report in a manner the Board found reasonable and easy to follow. The same can be said in relation to height, massing and bulk controls.

[163] Unlike the proposal in 2012, this development does not completely dwarf its surroundings. While it may well be that the Applicant and Mr. Lloyd would prefer a six-storey building, this Board cannot say that an additional storey, plus a penthouse, that covers only 30% of the top floor, goes beyond what Community Council could reasonably approve, in the exercise of its discretion under the RMPS and DMPS.

[164] The Board is not convinced Mr. Lloyd's approach to issues of transition, buffering, mass and scale was mandated by the relevant policies, or the only approach available to Community Council. There can be more than one reasonable approach to these discretionary considerations. Mr. Lloyd was candid in his admission on this point. The Board finds the Development Agreement, and Community Council's approval thereof, addresses compatibility issues in a reasonable manner which is reasonably consistent with the RMPS and DMPS.

iv) Density

[165] The Staff Report clearly identified density as an issue. Community Council was made aware that the Development Agreement allowed for up to 90 dwelling units, which would result in approximately 152 units per acre. In fact, the Staff Report says the proposed density is much higher than nearby buildings.

[166] Again, there is no absolute figure which guides Community Council's density considerations. It must use its judgement to determine how much is too much when looking at the RMPS and DMPS as a whole.

[167] While the Board listened with interest to Mr. Lloyd's testimony relating to FAR, this is but one potential methodology amongst many which could be used to address density. Community Council did not have to follow this methodology, or even be presented with it.

[168] For this reason, the Board finds the discussion related to what constitutes "perspective drawings", which are required pursuant to the preamble to DMPS Policy IP- 5, and whether the drawings presented by the Appellant were defective, is not of great significance.

[169] While both Mr. Lloyd and Mr. Ouellet appeared to be of the view that traditional perspective drawings contain dimensions to scale, which might have assisted in the FAR calculation, there is nothing in the wording of IP-5 that says perspective drawings must contain such scale dimensions.

[170] The Board accepts Ms. Rubin's argument that the primary purpose of perspective drawings is "...to allow a viewer to "see" the proposed development in three dimensions from various perspectives." The computer-generated renderings included with the package presented to Community Council on September 6, 2018 accomplished that goal. They were therefore "reasonably consistent" with the policy.

[171] As well, there were other plans and specifications, with dimensions, including some to scale, which were available to Community Council. Some were too large to put in the Staff Report. In combination, they were sufficient to complete an adequate FAR calculation, as is evident from Mr. Lloyd's evidence. In any event, the express terms of the Development Agreement, with its maximum allowable units, allowed Community Council to determine the maximum density, on a unit per square acre basis.

[172] The plans, drawings, and wording of the Development Agreement provided information sufficient for Community Council to assess density, even if some individual councillors may have paid little attention to its significance.

[173] The Board notes the following:

- Mr. Lloyd argued that the proposed density was not in keeping with as-of-right development in R-4 zones under the DLUB. He admitted, however, that a building with indoor parking could have as many as 70 units;

- The Board agrees with Ms. MacLaurin that where a project proceeds by a development agreement, Community Council is no longer bound by the provisions of the DLUB;
- In any event, in the Board's view, an additional 20 units per acre is not so excessive as to lead to the conclusion the Development Agreement did not appropriately address density;
- The Properties are located within the RMPS "Regional Centre", which comprises all of Halifax Peninsula and Dartmouth inside the Circumferential Highway;
- The RMPS seeks to increase population growth in the Regional Centre by 25%;
- The RMPS includes medium to high density residential areas in the Penhorn-Woodlawn sub-area. This particular area is designated as a "Regional Local Growth Centre", which is the second largest density in the hierarchy;
- While it is true RMPS Policy S-9 could be interpreted as directing HRM to consider maintaining medium to low density patterns in established areas when amending the DMPS, it does not mandate that no high-density buildings be allowed in this particular neighbourhood;
- While the Board has considered the comparables provided by Mr. Lloyd, it finds persuasive Mr. Ouellet's opinion that a high-density building in this area, at the edge of a residential area, next to a busy street, with nearby commercial uses, does not contravene the policy directions in the RMPS or the DMPS.

[174] Based on the foregoing, the Board finds that density considerations do not vitiate the exercise of Community Council's discretion, under the RMPS and DMPS. The

proposed density does not meet the threshold of failing to reasonably carry out the intent of the DMPS and the RMPS.

v) Traffic and Sidewalks

[175] Concerns about traffic volumes the proposed apartment building would generate and the impact this would have along Prince Albert Road were raised throughout the planning process and in this Appeal.

[176] It is clear Prince Albert Road is a very busy street, with numerous points of access and egress in a relatively confined area.

[177] In combination, the DMPS, including Policies IP-1(3), IP-1(4), IP-1(4)(ii), IP-1(4)(iv), IP-5(b)(ii), IP-5(b)(iii), IP-5(d), and RMPS Policies G-15(a)(iv) and G-15 (b)(iii), address traffic, traffic generation, road networks, access and egress and sidewalks.

[178] In order to address access and egress from the proposed apartment building, the Development Agreement provides that the only site access for vehicles will be from Glenwood Avenue, which is a less busy street than Prince Albert Road.

[179] A traffic impact study dated September 26, 2014 from WSP concluded:

- There would be no significant impacts on Prince Albert Road, Glenwood Avenue, or the remaining regional street network for trips generated from the proposed apartment building;
- Adequate visibility was available for vehicles exiting the proposed garage and for pedestrians;
- Traffic signals were not needed at the Glenwood intersection.

[180] The WSP traffic study was accepted by HRM traffic engineers. No other traffic study disputing these results has been provided.

[181] Traffic safety concerns were also investigated by an HRM Transportation Road Safety Engineer, at the request of the Appellant. She agreed with WSP's results. She also pointed out there would now be only one entrance to the Properties, where currently there are two, thus eliminating one point of access and egress.

[182] The Board is satisfied Community Council had sufficient information before it to determine the policy directions in the DMPS and RMPS in relation to traffic had been met.

[183] With respect to sidewalks, currently there is a lack of sidewalks on Glenwood Avenue. The Applicant must extend one next to the proposed apartment building to the neighbour's property line. This requirement is addressed in the Development Agreement.

[184] There is no basis for challenging Community Council's decision as it relates to traffic and sidewalks.

vi) Height, Wind effects and the Lake Banook Canoe Course

[185] The parties agree that the Properties are not within the 35-foot height restriction established for the Lake Banook Race Course Area. They are immediately adjacent to the border of this height restriction area.

[186] The Board discussed the implication of the location of the Properties in 2012:

[338] As the Board has noted, the subject property abuts the Banook 35-foot restriction area. A principal factor – as is indicated by, among other things, DMPS Policy IP-9, to which the Board has just referred – in the adoption of that restriction area is a concern about the possible wind impact upon the lake. Just across the street from the subject property (in either direction, i.e., whether across Prince Albert, or across Glenwood), there is a strict height limit of 35 feet. Monaco's tower, at 15 storeys, would be much higher than that.

[339] The Board has reviewed the provisions of the MPS, in the context of the evidence relating to the particular project before it. The Board finds that, in its opinion, nothing in the MPS (in the Board's opinion) causes it to conclude that possible wind effects on Lake Banook become irrelevant the moment one steps outside the 35-foot height-restriction area.

[340] To the contrary, the Board considers it to be a reasonable interpretation of the MPS that Council could have regard (in making a decision about rezoning, or making a decision

about a development agreement, for that matter) to such matters as the height of Monaco's proposed building, in the context of possible wind effects upon the lake, even though Monaco's property is outside the 35-foot restriction area.

[2012 NSUARB 155, p. 80]

[187] The Board agrees with the proposition set out in its previous decision. Community Council can have regard to wind effects which a tall building could conceivably generate in relation to Lake Banook.

[188] No party submitted wind effects could not be a relevant consideration. It is the level of consideration which the DMPS requires which is in issue.

[189] At the outset, the Board finds that DMPS Policy R-6 is of little assistance. It relates more to general development and protection of recreation areas in relation to city-owned lands, with respect to, amongst other things, lakes. The specific manner in which protection is afforded to Lake Banook is through the DMPS policies.

[190] DMPS Policies IP-9, IP-10 and IP-11 are of assistance in that they provide a framework for the 35-foot height restriction, which is to protect the important Lake Banook competitive paddling facility from the negative impacts of wind.

[191] DMPS Policy H-16 is also of some significance, in that it shows HRM has taken steps to mandate wind impact studies on a specific property.

[192] The direction provided by reading these policies together is that Community Council has the discretion to consider wind impacts on Lake Banook, where the Properties are outside the height-restricted area, but the DMPS does not mandate how that discretion is to be exercised. In particular, the DMPS does not mandate that any wind studies be conducted, let alone the type of wind studies which are required.

[193] The Board agrees with Ms. MacLaurin that it was for Community Council to determine the extent to which wind should be considered, and how much weight should be given to any one factor in making this decision.

[194] Community Council was aware of the following:

- The overall height of the building (27 meters);
- Its distance from Lake Banook (135 meters);
- Its distance from the paddling course (over 800 meters);
- The presence of obstacles between the proposed building and Lake Banook;
- The results of a desk-top wind study analysis by Dr. Wu in relation to the Applicant's earlier 15-storey proposal;
- Certain wind tunneling reports relating to other development sites in HRM over the years.

[195] The Board accepts that Mr. Ouellet is not an expert in wind effects. It is not relying on any opinion he has expressed with respect to wind effects.

[196] Mr. Lloyd was qualified as an engineer capable of raising basic principles of civil engineering related to wind. This is a limited qualification. Mr. Lloyd acknowledged he has no particular expertise in wind studies.

[197] The Board agrees with Ms. MacLaurin that Mr. Lloyd's proposed wind study methodology, which would model the cumulative effects of a number of buildings built over time, is not within his area of expertise. It appears to be a methodology developed with meteorologist Michael Pancura, incorporating traffic study principles into wind analysis. In any event, the methodology is not mandated by the DMPS.

[198] In fact, it appears Mr. Pancura provided the necessary expertise to enable Mr. Lloyd to write a significant portion of his discussion on wind, and an extensive criticism of Dr. Wu's approach. Mr. Pancura was not called to testify, and his involvement in the preparation of the Lloyd Report was not known to the Board until he was cross-examined. The Board affords little weight to Mr. Lloyd's conclusions relating to wind analysis.

[199] When the Board was assessing the quality of Dr. Wu's wind study related to the 15-storey proposal under consideration in 2012, it was in the context of the Applicant challenging Community Council's decision to refuse approval and submitting evidence to show wind was not a factor with its then proposed 15-storey development.

[200] The Board concluded:

...from the evidence and submissions before it on the point that Dr. Wu's results are, on the balance of probabilities likely to be correct-but it is not an impossibility they may be wrong.

[2012 NSUAR155, p.79]

[201] The Board was therefore not convinced the wind study was sufficient to prove the Applicant's case. Different considerations apply when the burden of proof lies with the Appellant in this case.

[202] The Board agrees with the Appellant the wind tunneling analysis in other locations may be of little use in assessing this particular site. The fact remains that Community Council had before it information on the height, location and size of the building, and a wind study, for a previous 15-storey proposal on the same site, which this Board had commented upon, that predicted no negative wind effects in relation to Lake Banook. It had sufficient information before it upon which it could reasonably decide how to exercise its discretion.

[203] There is no evidence before the Board which shows the proposed development will have negative wind effects on the Lake Banook Race Course. While Mr. Lloyd suggested it was a possibility, as previously indicated, his expertise is very limited.

[204] The Appellant and Mr. Lloyd point to correspondence from the Atlantic Division Canoe and Kayak Canada (ADCKC) dated January 14, 2011, showing the involvement of the ADCKC in assessing wind analysis for a proposed development on the former YMCA site. The documents set out discussions about various testing criteria and caution specific testing criteria may depend on the area of Lake Banook being studied.

[205] AKCKC did not provide input before Community Council, during the approval process for the Development Agreement, nor did it raise concerns in the proceeding before the Board.

[206] In the circumstances of this case, the Board finds the Appellant has failed to show Community Council's decision not to require a wind study did not reasonably carry out the intent of the DMPS. The Board will defer to the elected Community Council where no such wind effects, or potential effects, have been demonstrated.

vii) Final Considerations

[207] The Appellant raised numerous arguments, and Mr. Lloyd offered numerous opinions, sometimes expressed in different ways. To the extent arguments and opinions have not been addressed in this Decision, the Board has rejected them, or found they were not significant in its analysis.

VIII SUMMARY AND CONCLUSION

[208] The Applicant proposed an eight-storey apartment building, including a top floor penthouse, with ground floor commercial space, on two lots located at the corner of Prince Albert Road and Glenwood Avenue, in Dartmouth.

[209] The lots are zoned R-4 (Multi-Family Residential – High Density) and GC (General Commercial) respectively. Since 1991, in order to build an apartment building in Dartmouth, except for limited exceptions, the development agreement process must be pursued, rather than proceeding under the DLUB.

[210] On September 6, 2018, Community Council held a public hearing where the proposed Development Agreement was considered. A Staff Report adequately discussed the Development Agreement in the context of the relevant DMPS policies.

[211] While a relevant RMPS policy was not specifically addressed in the Staff Report, all the relevant policy directions in that RMPS policy are contained in the DMPS provisions before Community Council.

[212] The Appellant appealed Community Council's approval decision. While arguments were presented in various ways, the Appellant essentially said that Community Council had not properly followed the DMPS policies, as elaborated upon by certain RMPS policies, with respect to:

- Height, size, scale, bulk, massing, density, lot size, lot coverage, buffering and transition such that the proposal was incompatible with the existing neighbourhood;
- Community Council had not addressed traffic and traffic safety concerns as required by the relevant DMPS and RMPS policies;

- Community Council had not properly considered the potential impacts the height of the proposed development would have on Lake Banook, and in particular potential wind effects on its world-renowned competitive paddling course.

[213] After considering all the evidence, the Board finds that Community Council's decision related to the exercise of its discretion in determining what were appropriate building metrics, and what adequate controls were required to protect adjacent uses, including the Lake Banook paddling course, under the DMPS and RMPS as a whole.

[214] The Board further finds that Community Council had sufficient information before it to properly exercise its discretion, and that the Appellant has failed to show, on a balance of probabilities, that Community Council's decision failed to reasonably carry out the intent of the RMPS and DMPS.

[215] Accordingly, the Appeal is dismissed and Community Council's decision to approve the Development Agreement is upheld.

[216] An Order will be issued accordingly.

DATED at Halifax, Nova Scotia, this 19th day of February 2019.



Richard J. Melanson

APPENDIX “A”

RMPS

G-1 The *HRM Community Engagement Strategy*, approved by HRM in 2008, shall guide how HRM will inform, consult with, and engage the public in developing and implementing its programs and services.

G-3 When preparing secondary planning strategies, HRM shall incorporate a visioning program as part of the planning process.

G-7 When evaluating amendments to Land Use By-laws or development agreement applications, in the event of conflict between the policies of this Plan and a Secondary Planning Strategy, the more stringent shall prevail.

S-9 HRM shall prepare secondary planning strategies for the centres outlined in Tables 3-1 and 3-2 and generally illustrated on Map 1 with consideration given to:

- a) the objectives presented in section 3.1 and the general characteristics presented in Tables 3-1 and 3-2;
- b) the specific boundaries, population targets and detailed design policies related to the layout of the centres, range of permitted uses and criteria for conversion of uses, allowable development densities and mechanisms for implementation;
- c) the recommendations of any plans and studies identified by this Plan that have been accepted or endorsed by Regional Council; and
- d) any other relevant objectives and policies of this Plan.

G-15 In considering development agreement applications pursuant to the provisions of this Plan, in addition to all other criteria as set out in various policies of this Plan, HRM shall consider the following:

- (a) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of HRM to absorb any costs relating to the development;
 - (ii) the adequacy of municipal wastewater facilities, stormwater systems or water distribution systems;
 - (iii) the proximity of the proposed development to schools, recreation or other community facilities and the capability of these services to absorb any additional demands;

- (iv) the adequacy of road networks leading to or within the development; and
- (v) the potential for damage to or for destruction of designated historic buildings and sites;
- (b) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage; and
 - (v) signs;
- (c) that the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding; and
- (d) if applicable, the requirements of policies E-10, T-3, T-9, EC-14, CH-14 and CH-16.

DMPS

(o) Apartment Building Development

Careful consideration should be given to the construction of apartment buildings throughout the City. Recently, concerns have been expressed about the exterior design, density, concentration, site treatment, massing and traffic issues as they relate to apartment development. These issues could be addressed by the Development Agreement process and would also permit public involvement in the evaluation of the proposed development.

Policy IP-5 It shall be the intention of City Council to require Development Agreements for apartment building development in R-3, R-4, C-2, MF-1 and GC Zones. Council shall require a site plan, building elevations and perspective drawings for the apartment development indicating such things as the size of the building(s), access & egress to the site, landscaping, amenity space, parking and location of site features such as refuse containers and fuel storage tanks for the building. In considering the approval of such Agreements, Council shall consider the following criteria:

- (a) adequacy of the exterior design, height, bulk and scale of the new apartment development with respect to its compatibility with the existing neighbourhood;
- (b) adequacy of controls placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) the height, size, bulk, density, lot coverage, lot size and lot frontage of any proposed building;
 - (ii) traffic generation, access to and egress from the site; and
 - (iii) parking;
- (c) adequacy or proximity of schools, recreation areas and other community facilities;
- (d) adequacy of transportation networks in, adjacent to, and leading to the development;
- (e) adequacy of useable amenity space and attractive landscaping such that the needs of a variety of household types are addressed and the development is aesthetically pleasing;
- (f) that mature trees and other natural site features are preserved where possible;

- (g) adequacy of buffering from abutting land uses;
- (h) the impacts of altering land levels as it relates to drainage, aesthetics and soil stability and slope treatment; and
- (i) the Land Use By-law amendment criteria as set out in Policy IP-1(c). (As amended by By-law C-692, Dec. 4, 1991)

Policy IP-5A Notwithstanding Policy IP-5, within the Main Street Designation, Council shall permit apartment buildings through the Land Use By-Law. (RC-Sep 10/13;E-Nov 23/13)

Policy IP-9 It shall be a policy of Council to apply a maximum height restriction through the Land Use By-law to all buildings situated within "Lake Banook Canoe Course Area" as identified on Map 9s".

Policy IP-10 Further to Policy IP-9, Council shall not consider any rezoning or development agreement application for buildings having a h8 greater than 35 feet within the Lake Banook Canoe Course Area. Within the Lake Banook Canoe Course Area, there are instances where buildings exceed the maximum height restriction. Generally such buildings would be made non-conforming structures and subject to the provisions of the Municipal Government Act. It is not the intention of Council to require these buildings to comply with the new height restriction nor be prevented from being replaced. Instead, Council objective is to maintain current height conditions and allow for modification and replacement of existing buildings.

Policy IP- 11 Existing buildings situated within "Lake Banook Canoe Course Area", as identified on Map 9s, which exceed the height restriction under the Land Use By-law shall be recognized as existing structures." (RC-Feb 8/05;E-Apr 23/05)

Policy IP-1(c) Zoning By-law

The Zoning By-law is the principal mechanism by which land use policies shall be implemented. It shall set out zones, permitted uses and development standards which shall reflect the policies of the Municipal Development Plan as per Section 33 (3) of the Planning Act. The zoning by-law may use site plan approval as a mechanism to regulate various uses. (RC-Sep 8/09;E-Nov 14/09) Notwithstanding the above, it shall be the intention of Council not to pre-zone lands outside the development boundary as shown on the Generalized Land Use Plan: Map 9; Map 9b, 9c, 9d, 9e, 9g, 9h,9i (By-law 633), 9i (By-law 724), 9j, 9q, 9m, 9o, 9p (Portland St), 9p (Craigwood) and 9r (As amended by By-law C-475, Sept. 20, 1983 and By-law C-493, Dec.9, 1983 and By-law C-511, July 6, 1984). It shall recognize that certain areas are premature for specific zoning classifications by reason of lack of services, public facilities or other constraints. Council shall use the Hzone (Holding Zone). In the H Zone the permitted types of uses shall be limited in accordance with the Reserve classification in Table 4 (As amended by By-law C-475, Sept. 20, 1983). In this manner, Council can maintain a comparatively high degree of control, and major development proposals contemplated for such areas shall be processed as zoning amendments. In considering zoning amendments and contract zoning, Council shall have regard to the following:

- (1) that the proposal is in conformance with the policies and intent of the Municipal Development Plan

- (2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal
- (3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries
- (4) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the City is to absorb any costs relating to the development
 - (ii) the adequacy of sewer and water services and public utilities
 - (iii) the adequacy and proximity of schools, recreation and other public facilities
 - (iv) the adequacy of transportation networks in adjacent to or leading to the development
 - (v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas
 - (vi) preventing public access to the shorelines or the waterfront
 - (vii) the presence of natural, historical features, buildings or sites
 - (viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized
 - (ix) the detrimental economic or social effect that it may have on other areas of the City.
- (5) that the proposal is not an obnoxious use
- (6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:
 - (i) type of use, density, and phasing
 - (ii) emissions including air, water, noise
 - (iii) traffic generation, access to and egress from the site, and parking Dartmouth Municipal Planning Strategy Page 151
 - (iv) open storage and landscaping
 - (v) provisions for pedestrian movement and safety
 - (vi) management of open space, parks, walkways
 - (vii) drainage both natural and sub-surface and soil-stability
 - (viii) performance bonds.
- (7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock outcroppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors
- (8) that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council
- (9) that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:
 - (i) Council with a clear indication of the nature of proposed development, and
 - (ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community
- (10) *Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in*

accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-Jul 2/02;E-Aug 17)

Policy H - 16 In addition to the requirements and provisions of Policy IP-5, and all additional referenced policies, the following shall be considered in the approval of any development agreement for multiple unit residential development on the former YMCA property at Brookdale Court:

- (a) The height, mass and orientation of any buildings(s) on the site shall be designed such that any negative impacts of altered wind and air current patterns on the recreational use of Lake Banook are minimized. The developer shall provide a report, prepared by a qualified person, to detail and analyze the expected effects of the alteration of wind patterns resulting from the redevelopment of this site;
- (b) Any negative impacts on surrounding developments as a result of changes to traffic volumes or patterns shall be minimized through a combination of alterations to the access and egress points and a reduction in the number of permitted units. The developer shall provide a report, prepared by a qualified person, to detail and analyze the expected effects on traffic volumes and patterns resulting from the redevelopment of this site;
- (c) Except for the areas to be used as public beach areas, provisions shall be made to provide continuous shoreline tree cover as viewed from the lake similar to the adjacent properties and provide continuous public walkway connection along the shoreline area between the Trans Canada Trail and existing park parcel PID # 100511; and
- (d) The density of the development shall be similar to the overall density of adjacent multiple unit residential developments.

Policy R-6 It shall be the intention of City Council to protect and develop the Dartmouth Commons and the City-owned lands along Lake Charles, MicMac, and Banook as strong city wide recreation areas.

Policy E-8 It shall be the intention of Council to protect water quality and areas of natural habitat, by establishing in the Land Use By-law appropriate measures to mitigate the potential impacts of runoff and contaminants from commercial and industrial sites. (RC-Oct 2/01;E-Oct 31/01)

Policy T-10 It shall be the intention of City Council to undertake a design study to widen Braemar Drive and take into consideration the associated concerns of pedestrian movements and the protection of the lake.

DLUB

PART 5: R-4 (MULTIPLE FAMILY RESIDENTIAL) ZONE - HIGH DENSITY

35(1) The following uses only shall be permitted in an R-4 Zone:

- (a) R-1, R-2, R-3 and TH uses as herein set out,
- (b) apartment buildings,

(c) uses accessory to any of the foregoing uses.

35(2) Buildings used for R-1, R-2, R-3 and TH uses in an R-4 Zone shall comply with the requirements of an R-1, R-2, R-3 or TH Zone respectfully.

35(3) Buildings used for R-4 uses in an R-4 Zone shall comply with the following requirements:

(a) Lot coverage, maximum - 50%

(b) Area (in square feet) of site required by type of dwelling unit:

TYPE OF DWELLING UNIT

Number of Bed-Sitting One Two Three or more

Storeys Room Bedroom Bedrooms Bedrooms

1 440 sq. ft. 550 sq. ft. 890 sq. ft. 1230 sq. ft.

2 410 510 820 1130

3 380 470 760 1050

4 350 440 700 970

5 330 410 650 890

6 320 380 610 820

7 310 360 570 770

8 310 350 540 720

9 300 340 510 690

10 300 330 480 660

11 & over 300 330 460 640

(c) Notwithstanding the provisions of paragraph (b) above, the number of permissible dwelling units for any site may be increased by:

(i) 2% where at least one-third of the parking requirements are provided within the building; or

(ii) 4% where at least two-thirds of the parking requirements are provided within the building; or

(iii) 6% where all of the parking requirements are provided within the building; or

(iv) 10% where the building site abuts a public open space having a minimum area of five acres or where the building site is located on the opposite side of a City street from a five acre public open space.

(d) On all buildings a minimum side and rear yard clearance of fifteen feet shall be maintained and if the building is more than fifty feet high on its highest side the sideyards and rearyards shall have a minimum clearance of not less than one half the height of the adjacent side of the building.

(e) Height Maximum -35 feet on all parcels of land situated within the Lake Banook Canoe Course Area@ as identified on Schedule AW@. (RC-Feb 8/05;EApr 23/05)

35(4) No uses other than those permitted in R-1, R-2, and TH Zones shall be permitted unless the lot area is equal to or greater than ten thousand square feet and unless the street frontage is equal to or greater than one hundred feet.

35(5) All developments including three or more dwelling units shall provide in addition to the site requirements set out in Sub-section (3) of this section, amenity areas of not less than one hundred square feet for each bed-sitting room or one bedroom dwelling unit; three hundred square feet for each two bedroom dwelling unit; and five hundred square feet for each three or more bedroom dwelling units. An amenity area shall be a space set aside for recreational purposes such as communal play areas, recreational rooms, roof decks, balconies, swimming pools and tennis courts. An amenity area shall have no dimension less than thirty feet. NOTE: Effective December 4, 1991, Multiple family residential developments in the City of Dartmouth are permitted only by development agreement.

PART 25: GC (GENERAL COMMERCIAL) ZONE

52(1) The following uses only shall be permitted in a GC Zone:

(a) R-4 uses as herein set out;

(b) any business or commercial enterprise except obnoxious uses and uses creating a hazard to the public.

52(2) Buildings used for R-4 uses in a GC Zone shall comply with the requirements of an R-4 Zone.

52(3) Where apartments are to be constructed above commercial uses, the maximum density of apartments shall be as in the R-4 Zone, provided however, that the commercial uses may cover 100% of the lot. In this case, the area of any floor where any portion is devoted to apartments shall not exceed 40% of the total area.

(As amended by By-law C-392, Dec 22/7)